

# **Progress on Implementing the Native American Graves Protection and Repatriation Act**

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**A REPORT TO CONGRESS**

**Native American Graves Protection  
and Repatriation Review Committee**

**JUNE 1993**





## INTRODUCTION

**T**he Native American Graves Protection and Repatriation Act became law on November 16, 1990. The Act addresses the rights of lineal descendants, Indian tribes, Native Alaskan villages and corporations, and Native Hawaiian organizations to certain Native American human remains and cultural items with which they are affiliated. Section 8 of the Act authorizes the establishment of a committee to monitor and review implementation of the required inventory and identification process and related repatriation activities. This section also requires the committee to report annually to Congress on the progress of implementing the statute. This is the first such to report to Congress. It describes the committee's establishment and activities during the twelve months following their first meeting in May 1992. This report also includes a brief section on recommendations.

## ESTABLISHING THE COMMITTEE

**O**n August 2, 1991, Secretary of the Interior Manuel Lujan signed the charter describing the objectives, scope, and purposes of the committee. A copy of the charter appears in Appendix 1 of this report. Specifically, the committee is responsible for:

**Consulting** with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the committee affecting such tribes or organizations;

**Consulting** with the Secretary of the Interior in the development of regulations to carry out Public Law 101-601;

**Monitoring** the inventory and identification process to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

**Facilitating** the resolution of any disputes among Indian tribes, Native Alaskan villages and corporations, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

**Reviewing** and making findings relating to the identity or cultural affiliation of certain items, or the return of such items, upon the request of any affected party;

**Making** recommendations, if appropriate, regarding future care of cultural items which are to be repatriated;

Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

Performing such other related functions as the Secretary of the Interior may assign to the committee; and

Submitting an annual report to Congress on the progress made and any barriers encountered in carrying out the committee's responsibilities during the year.

Section 8 of the Act outlines the nomination procedures and composition of the committee in detail. The committee is to be composed of seven members appointed by the Secretary of the Interior as follows:

Three members appointed from nominations submitted by Indian tribes, Native Alaskan villages and corporations, Native Hawaiian organizations, and traditional Native American religious leaders, with at least two of such persons being traditional Indian religious leaders;

Three members appointed from nominations submitted by national museum organizations and scientific organizations; and

One member appointed from a list of persons developed and consented to by all members appointed above.

On August 28, 1991, a Notice of Nomination Solicitation appeared in the *Federal Register* for membership on the committee. Nearly 600 letters from the Secretary of the Interior were sent with the copies of the notice to Indian tribes, Native Alaskan villages and corporations, Native Hawaiian organizations, traditional religious leaders, and national museum and scientific organizations. Over fifty nominations were received by September 27, 1991, when the solicitation period closed.

On March 3, 1992, Secretary Lujan appointed six private citizens as members of the committee. At their first meeting, held in Washington, DC, on April 29-May 1, 1992, the committee developed and consented to a list of nominees for the Secretary to select the seventh committee member. On August 4, 1992, Secretary Lujan announced the appointment of the seventh member. In making these appointments, Secretary Lujan noted that "the committee faces a challenging set of tasks, ranging from advising me on the regulations needed for implementing the statute to assisting in the resolution of disputes caused by its requirements. All of these tasks must be approached with a willingness to listen to each side of an issue and a careful reading of the statute." Secretary Lujan appointed the following members: Ms. Rachel Craig, Dr. Jonathan Haas, Mr. Dan Monroe, Ms. Tessie Naranjo, Dr. Martin Sullivan, Mr. William Tallbull, Dr. Phillip Walker.

The Secretary of the Interior is responsible for providing reasonable administrative and staff support necessary for the deliberations of the committee. On October 16, 1991, Secretary Lujan issued Secretarial Order 3149 delegating these responsibilities to the Archeological Assistance Division of the National Park Service.

Even before this date, the National Park Service had taken the administrative steps necessary to provide funding for the committee beginning in the 1992 fiscal year (starting in October 1991) and in drafting the charter for the committee.

Committee support activities have focused on organizing and holding four committee meetings, preparing drafts of the regulations and other guidance documents for consultation with the committee, and organizing information and arrangements related to the dispute considered by the committee at its February 1993 meeting.

## COMMITTEE ACTIVITIES

The committee has held four meetings: in May, August, and October 1992 and another in February 1993. These public meetings provide the primary forum for consultation between the committee and Indian tribes, Native Alaskan villages and corporations, Native Hawaiian organizations, and museums. At each of these meetings the committee also considered specific items or topics, such as draft proposed implementing regulations, draft guidance documents, and committee procedures. Minutes for each of these meetings are provided in Appendix 2 of this report.

The first meeting was convened April 29, 30, and May 1, 1992, in Washington, DC. Topics discussed at this meeting included: (1) an overview of the statute; (2) development of a list of persons consented to by all current members from which the Secretary of the Interior should appoint the seventh member of the committee; and (3) development of draft proposed regulations implementing the statute.

The committee held its second meeting August 26-28, 1992, in Denver, Colorado. Matters discussed at this meeting included: (1) development of interim guidance concerning summaries, inventories, and notification; (2) development of proposed regulations implementing the statute; and (3) the dispute resolution procedures to be followed by the committee. Election of the committee chair was also taken up this meeting. In light of the absence of Mr. Tallbull, the committee members in attendance decided to elect an interim-chair until such time as all members were present. Ms. Craig was unanimously selected as interim-chair.

Fort Lauderdale, Florida, served as the site for the committee's third meeting October 8-10, 1992. Four major issues dominated the agenda: (1) the review of Draft 4 of the proposed regulations; (2) the election of a committee chair; (3) the discussion of dispute resolution procedures; and (4)

the adoption of a regular meeting schedule. All members were in attendance at this meeting. The committee decided at that time to elect a chair to serve for the next twelve months. After thanking Ms. Craig for service as the committee's first chair, the committee unanimously elected Ms. Naranjo to a one-year term.

The committee also considered a request for intervention from *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, a nonprofit Native Hawaiian organization incorporated for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, regarding four sets of human remains held by the P.A. Hearst Museum of Anthropology of the University of California at Berkeley. After reviewing documentation provided by *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, the committee recommended that the parties:

Continue efforts to expediently repatriate the two sets of human remains identified as Native Hawaiian to the appropriate Native Hawaiian organization; and

Consider other approaches, such as physical anthropological examination of the human remains or convening a joint-committee to clarify the cultural affiliation of the two remaining sets of human remains.

The two sets of remains identified as Native Hawaiian were repatriated to representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* on September 11, 1992.

The fourth meeting of the committee was convened February 26-28, 1993, on the island of Oahu, Hawaii. The committee focused on: (1) a dispute between *Hui Mālama I Nā Kūpuna O Hawaii Nei* and the P.A. Hearst Museum; (2) progress made, and any barriers encountered, in implementing the NAGPRA in Hawaii; and (3) the committee's 1992 report to Congress. The committee heard testimony regarding the cultural affiliation of the remaining two sets of human remains from representatives of *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* and the P.A. Hearst Museum. Based on this information, the committee prepared two findings regarding the above mentioned dispute that were published in the *Federal Register* on April 15, 1993:

Regarding the human remains identified as 12-10738-39, the committee found that the preponderance of the evidence indicated a relationship of shared group identity which could be reasonably traced between the human remains and present day Native Hawaiian organizations and recommended that the P.A. Hearst Museum revise its determination of their cultural affiliation and notify Native Hawaiian organizations directly and through a notice of inventory completion published in the *Federal Register* that the human remains are available for repatriation.

Regarding the human remains identified as 12-5456, the committee was unable to determine that the preponderance of the evidence indicated a relationship of shared group identity which could be reasonably traced between the human remains and present day Native Hawaiian organizations. However, the committee noted that: 1)



the human remains were from the Hawaiian Islands; 2) the scientific or educational value of the human remains is very small and has been reduced further by the current dispute; and 3) the necessary expertise for clarifying the cultural affiliation of these human remains is available in Hawaii. The committee recommended that these human remains be transferred to a museum in Hawaii for future consideration of cultural affiliation and care.

The Departmental Consulting Archeologist, in consultation with other Federal agencies and the review committee, has developed draft proposed regulations. The committee spent most of its initial meeting, as well as most of its third meeting, considering these draft proposed regulations. At the conclusion of the third meeting in October, 1992, the committee recommended that the Secretary proceed with the current draft of the proposed regulations. These proposed regulations were published for public comment in the *Federal Register* on May 28, 1993. Final regulations will be issued following a period of public comment and careful consideration by the review committee.

The statute provides procedures for determining the ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, when the statute was enacted. Since that time, these procedures have continued to be clarified through the rulemaking process. Most Federal agencies and Indian tribes appear to be complying with these procedures.

Federal agencies and museums receiving Federal funds are required to have completed summaries of their collections which might contain unassociated funerary objects, sacred objects, and objects of cultural patrimony by November 16, 1993. Federal agencies and museums receiving Federal funds are required to have completed their inventories of Native American human remains and associated funerary objects by November 16, 1995. To provide guidance in the absence of final regulations, the committee, in consultation with the National Park Service, developed a memorandum outlining suggested procedures for undertaking and completing the required summaries and inventories. This memorandum has been distributed to over 1,200 Federal agency, museum, Indian tribe, and Native Hawaiian organizations' representatives and other interested parties and is used when questions are received regarding the existing collection provisions of the statute.

Federal agencies and museums appear to be moving forward in the consultation and inventory process based on inquiries received by the Departmental Consulting Archeologist and the Archeological Assistance Division of the National Park Service, to whom responsibilities for implementation of NAGPRA have been delegated. Eight notices of inventory completion were received during 1992 from one Federal agency and four museums. These notices were published in the *Federal Register* as required by Section 5 (d)(3) of the statute.

Federal agencies and museums receiving Federal funds are required to expeditiously return Native American human remains and cultural items upon request to known lineal descendants or to culturally affiliated Indian tribes or Native Hawaiian organizations. Although the deadlines for summary and inventory completion are still several months or years away, a number of Federal agencies and museums already have repatriated Native American human remains and cultural items which have been claimed by an Indian tribe or Native Hawaiian organization.

The committee has emphasized its wish that the majority of disputes be resolved at the local level, but recognizes that some will eventually be brought to the committee for assistance in resolution. The committee envisions a multi-step process of information collection and assessment prior to the committee issuing a recommendation. Additional steps are envisioned before final submission of disputes to the committee for a formal finding. The entire process may span several meetings.

## **RECOMMENDATIONS**

Section 10 of the statute authorizes the Secretary of the Interior to make grants to Indian tribes, Native Alaskan villages and corporations, and Native Hawaiian organizations for the purpose of assisting in the repatriation of Native American cultural items, and to museums for the purpose of assisting in conducting the inventories and identification required under Sections 5 and 6 of the statute. The funding necessary to implement this grants program has not been requested or appropriated during FY 1991-93. The review committee considers this lack of funding to be the primary obstacle to successful implementation of this statute and urges Congress to appropriate the necessary funds in FY 1994.

The committee also recognizes that successful implementation of the statute by Federal agencies depends on such agencies having access to the funding necessary for conducting the inventories and identification required under Section 5 and 6. The review committee urges Federal agencies to request needed funds and positions to meet their responsibilities. The committee further urges Congress to act favorably upon such requests for appropriations.





## NATIVE AMERICAN GRAVES PROTECTION REVIEW COMMITTEE

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**PURPOSE** Monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5

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**AUTHORITY** Section 8 of Public Law 101-601

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**TERMS** Five years

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**MEMBERSHIP** Seven members

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MEMBER	TERM EXPIRES	NOMINATING SOURCE
Ms. Tessie Naranjo, Chair P. O. Box 1807 Española, New Mexico 87532 phone: (505) 753-3726 fax: (505) 753-8988	March 1997	Santa Clara Indian Pueblo
Ms. Rachel Craig Northwest Arctic Borough P.O. Box 1110 Kotzebue, Alaska 99752 phone: (907) 442-2500 fax: (907) 442-2930	March 1997	Treasures for Our Children Group Northwest Arctic Borough Fairbanks Native Association
Dr. Jonathan Haas Field Museum of Natural History Roosevelt Road at Lake Shore Drive Chicago, Illinois 60605 phone: (312) 922-9410 fax: (312) 663-5397	August 1997	Review Committee members
Mr. Dan L. Monroe Peabody & Essex Museum East India Square Salem, Massachusetts 01970 phone: (508) 745-1876 fax: (508) 744-6776	March 1997	American Association of Museums Museum Trustee Association

**NAGPRA COMMITTEE REPORT TO CONGRESS**

<b>MEMBER</b>	<b>TERM EXPIRES</b>	<b>NOMINATING SOURCE</b>
Dr. Martin E. Sullivan Heard Museum 22 E. Monte Vista Road Phoenix, Arizona 85004-1480 phone: (602) 251-0227 fax: (602) 252-9757	March 1997	American Association of Museums Museum Trustee Association
Mr. William Tallbull Dull Knife Memorial College 1 College Drive Lame Deer, Montana 59043 phone: (406) 477-6215 fax: (406) 477-6219	March 1997	Northern Cheyenne Tribe
Dr. Phillip L. Walker Department of Anthropology University of California Santa Barbara, California 93106 phone: (805) 893-2236 fax: (805) 893-8707	March 1997	Society for American Archaeology Association of American Universities American Anthropological Association

## BIOGRAPHIES OF COMMITTEE MEMBERS

**MS. RACHEL CRAIG** is recognized as being dedicated to preserving, maintaining, and enriching the traditional knowledge and beliefs of her people, the Inupiaq of Northwestern Alaska. She has been instrumental in working with successive generations of elders to instill in younger generations the values and beliefs which are the foundation of Inupiaq culture. Ms. Craig received her degree in history and has worked extensively with the university community. She is also active in the Inupiaq Circumpolar Conference which unites Eskimo peoples around the globe.

**DR. JONATHAN HAAS** has been a practicing anthropologist for over twenty years, with much of his career spent working with the Native American peoples of the Southwest. Since moving to the Field Museum of Natural History as Vice President for Collections and Research and Curator of Anthropology in 1989, he has been very active in the national repatriation dialogue and in developing the Field Museum's repatriation policy. Dr. Haas is a member of the consultation group on collections for the National Museum of the American Indian and serves on the Committee on Museum/Native American Collaboration of the American Association of Museums.

**MR. DAN MONROE** is Chief Executive Officer and President of the Peabody and Essex Museum in Salem, Massachusetts. He previously served as deputy director of the Alaska State Museum and President of the Portland Art Museum. Mr. Monroe was deeply involved in drafting the substitute amendment to H.R. 5237, which, in turn, with Senate amendments, became Pub.L. 101-601. He currently serves as President of the American Association of Museums.

**MS. TESSIE NARANJO** is an enrolled member of the Santa Clara Indian Pueblo and has been actively involved for many years in cultural issues of that community. She was instrumental in establishing the Pueblo's cultural preservation program as well as helping Pojoaque Pueblo in the cultural revitalization of their community. Ms. Naranjo is a member of the board of Keepers of the Treasures, a national organization whose focus is tribal cultural preservation concerns.

**DR. MARTIN SULLIVAN** is director of the Heard Museum in Phoenix, Arizona. Before assuming his current position, he served as director of the New York State Museum, where he negotiated the return of historic wampum belts to the Onondaga Nation of the Iroquois Confederacy. Dr. Sullivan has been a member of the board of directors of the American Association of Museums since 1987 and is currently a vice president of that organization. He served as a member of the National Dialogue on Museum-Native American Relations.

**MR. WILLIAM TALLBULL** is a traditional leader and historian of the Northern Cheyenne Tribe. He is well versed in Northern Cheyenne history, religion, and other traditional matters. He was instrumental in forming the Medicine Wheel Alliance, a coalition of Indian tribes and concerned citizens dedicated to preserving the Medicine Wheel sacred site in the Bighorn Mountains of Montana.

**DR. PHILIP WALKER** is Professor of Anthropology at the University of California at Santa Barbara, where he has taught since 1974, after receiving his PhD in 1973 from the University of Chicago. His research interests focus on bioarcheology and the prehistory and history of the native peoples of California. He is a member of the National Science Foundation-sponsored group developing recordation standards for human remains and serves as Chair of the Task Force on Repatriation of the Society for American Archaeology.



# **Appendix 1**

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## **NAGPRA COMMITTEE CHARTER**





## CHARTER

### NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REVIEW COMMITTEE

1. The official designation of the committee is the Native American Graves Protection and Repatriation Review Committee.
2. The purpose of the Committee is, in an advisory capacity, to monitor and review the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601.
3. In view of the objectives, scope and purposes of the Committee, it is expected to continue into the foreseeable future. The Committee shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the Committee has been completed.
4. The Committee reports to the Secretary, U. S. Department of the Interior, 18th & C Streets, N.W., Washington, D. C. 20240.
5. Support for the Committee is provided by the National Park Service, Archeological Assistance Division, U. S. Department of the Interior.
6. The duties of the Committee as set forth below are solely advisory. Specifically, the Committee shall be responsible for:
  - a. monitoring the inventory and identification process to ensure a fair, objective consideration and assessment of all available relevant information and evidence;
  - b. reviewing and making findings relating to the identity or cultural affiliation of certain items, or the return of such items, upon the request of any affected party;
  - c. facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;
  - d. compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

e. consulting with Indian tribes, Native Hawaiian organizations and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;

f. consulting with the Secretary in the development of regulations to carry out Public Law 101-601;

g. performing such other related functions as the Secretary may assign to the Committee;

h. making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated; and

i. submitting an annual report to Congress on the progress made and any barriers encountered in carrying out the Committee responsibilities during the year.

7. The estimated annual operating cost of the Committee is \$85,000, which includes the cost of one-fourth person-year of staff support.

8. The Committee will meet approximately two times a year, although it may convene more often if there is an immediate need for consultation, advice, and review. All meetings of the Committee shall be subject to the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988).

9. The Committee shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the Committee has been completed. The Committee is subject to rechartering every 2 years on the biennial anniversary of November 16, 1990, the date of enactment of Public Law 101-601, which established the Committee. The Committee shall take no action unless the filing requirements of sections 9 and 14 of the Federal Advisory Committee Act have been complied with. This charter will be effective from the date filed to November 16, 1992.

10. The Committee shall be composed of seven members appointed by the Secretary of the Interior as follows:

a. three members appointed from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders, with at least two of such persons being traditional Indian religious leaders;

b. three members appointed from nominations submitted by national museum organizations and scientific organizations; and

c. one member appointed from a list of persons developed and consented to by all members appointed pursuant to subparagraphs 10a. and 10b.

The Committee shall designate one member to be Chairperson. The Secretary may not appoint Federal officers or employees to the Committee. The Secretary shall establish such rules and regulations for the Committee as are necessary.

11. Terms of appointment shall be for 5 years, but all appointments shall terminate upon the termination of the Committee. Any vacancy on the Committee shall be filled in the same manner in which the original appointment was made within 90 days of the occurrence of such vacancy. If no successor is appointed prior to the expiration of a member's term, then the incumbent may continue to serve until the new appointment is made, provided that a charter under provisions of the Federal Advisory Committee Act is in effect.

12. Members of the Committee shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in Committee business. While away from their homes or regular places of business in the performance of services for the Board, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in government service are allowed such expenses in accordance with section 5703 of Title 5 of the United States Code.

13. The Departmental Consulting Archeologist, or in his absence a designee, will serve as the Designated Federal Officer as required by section 10 of the Federal Advisory Committee Act.

14. The Native American Graves Protection and Repatriation Review Committee was established by section 8 of Public Law 101-601, November 16, 1990.

  
Secretary of the Interior

Date Signed: August 2, 1991

Date Charter Filed: August 2, 1991



## **Appendix 2**

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### **NAGPRA COMMITTEE MEETING MINUTES**





**MINUTES  
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION  
REVIEW COMMITTEE  
FIRST MEETING: APRIL 29-MAY 1, 1992  
WASHINGTON, DC**

The first meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Dr. Francis P. McManamon, Departmental Consulting Archeologist, at 9:10 a.m, Wednesday, April 29, 1992, at the main building of the Department of the Interior, Washington, D.C. The meeting was adjourned at noon on Friday, May 1, 1992. The following Review Committee members, staff, and others were in attendance:

**Members of the Review Committee:**

Ms. Rachel Craig  
Ms. Tessie Naranjo  
Dr. Martin E. Sullivan  
Mr. William Tallbull  
Dr. Phillip L. Walker

**Members absent:**

Mr. Dan L. Monroe (participated in conference call on May 1, 1992)

**National Park Service staff present:**

Mr. Jerry Rogers, Associate Director for Cultural Resources  
Dr. Francis McManamon, Departmental Consulting Archeologist  
Dr. C. Timothy McKeown, Archeological Assistance Division  
Dr. Veletta Canouts, Archeological Assistance Division  
Dr. Ruthann Knudson, Archeological Assistance Division

**The following others were in attendance (at least part of the time):**

Mr. Timothy Glidden, Councilor to the Secretary  
Ms. Jennifer Salisbury, Deputy Assistant Secretary, Fish and Wildlife and Parks  
Mr. Lars Hanslin, Solicitor's Office, Department of the Interior  
Mr. Robert Moll, Solicitor's Office, Department of the Interior  
Mr. Jim Bird, Shea & Gardner  
Mr. David Cole, president, Keepers of the Treasure, Inc.  
Ms. Karen Funk, attorney, Hobbs, Straus, Dean & Wilder  
Ms. Jo Anna Meninick, Culture Committee, Yakima Nation  
Mr. Tom McCulloch, Advisory Council on Historic Preservation  
Ms. Diane White, attorney, Shea & Garner  
Mr. Raul N. Zinn, Voice of America

Dr. McManamon advised that notice of the meeting had been published in the April 15, 1992 Federal Register (copy appended as Attachment 1 to the minutes) and identified himself as Designated Federal Officer for the meeting. He agreed to serve as chairman until such time as the seventh member of the Review Committee is appointed by the Secretary and the members can elect a chairperson. He thanked the Review Committee members for agreeing to serve on the committee and for arranging their already busy schedules so they could attend this first meeting. He then proceeded by providing a brief introduction of each Review Committee member.

**Councilor to the Secretary**

After his introductions of the Review Committee members, Dr. McManamon introduced Mr. Timothy Glidden, Councilor to the Secretary, who welcomed the Review

Committee to Washington for the Secretary. Mr. Glidden recalled that Secretary Lujan's interest in ensuring more sensitive treatment of Native American human remains and other cultural items predated passage of the Native American Graves Protection and Repatriation Act (NAGPRA). The Secretary has worked diligently toward implementing the statute, his efforts including:

- o requesting and obtaining funding to establish the Review Committee and undertake other implementation activities,
- o chartering the Review Committee and soliciting nominations from which this august group ultimately was appointed,
- o assigning responsibility for implementing some provisions of the statute to the Departmental Consulting Archeologist (DCA) and the Archeological Assistance Division (AAD) of the National Park Service.
- o developing the initial draft of the implementing regulations which the Review Committee would be discussing at this first meeting.

Mr. Glidden identified this first meeting of the Review Committee as an important milestone in the implementation and emphasized that Secretary Lujan considers the committee's work to be critical to the preservation of Native American cultural items.

#### Deputy Assistant Secretary for Fish and Wildlife and Parks

Dr. McManamon introduced Ms. Jennifer Salisbury, Deputy Assistant Secretary for Fish and Wildlife and Parks, who welcomed the members to their first meeting on behalf of Assistant Secretary for Fish and Wildlife and Parks Michael Hayden. She said that both she and the Assistant Secretary take their responsibilities under NAGPRA very seriously and that she is personally happy to have the opportunity to work together with the Review Committee to ensure the fair implementation of the statute's provisions. She pointed out that the Assistant Secretary's office was instrumental in obtaining FY 1992 appropriations to enable the members to come together as a chartered Review Committee to begin the crucial task of advising the Secretary. She anticipates the development of a strong working relationship with the Review Committee.

#### Associate Director, Cultural Resources, National Park Service

Dr. McManamon introduced Mr. Jerry Rogers, Associate Director for Cultural Resources, National Park Service. Reflecting upon 25 years of service in Washington, Mr. Rogers remarked that he is extremely optimistic about the current efforts to implement NAGPRA. Mr. Rogers pointed out that current efforts to implement the statute exist within the context of a variety of cultural resource programs administered by the National Park Service -- the National Register Program, the Historic American Building Survey/Historic American Engineering Record, the Archeological Assistance Division, the Tax Incentive Program, as well as National Park System programs in historic architecture, history, archeology, and ethnography. He specifically recognized the Tribal Historic Preservation Grants program as being instrumental in providing the foundation for Keepers of the Treasures, a group which he hopes will eventually develop into the Native American equivalent of the National Trust for Historic Preservation. Mr. Rogers pointed out that there is more money devoted to these programs now than at any time in his 25 years in Washington, and he singled out the senior level of administrators with the Department of the Interior -- referring specifically to Secretary Lujan, Assistant Secretary Hayden, and Deputy Assistant Secretary Salisbury -- as being responsible for what he considers the best of times for heritage preservation.

### NAGPRA Program Staff

Dr. McManamon introduced Dr. Timothy McKeown and Mr. Lars Hanslin. Dr. McKeown was hired by the National Park Service-Archeological Assistance Division (AAD) as NAGPRA Program Leader, thanks to the funding previously mentioned by Ms. Salisbury. Among Dr. McKeown's roles are supervising development of the draft regulations and coordinating activities for the Review Committee.

Mr. Hanslin serves with the Solicitor's Office within the Department of the Interior and specializes in matters related to the implementation of cultural resource laws. Dr. McManamon thanked Mr. Hanslin for making himself available over the next three days to answer any legal questions that come up.

### Review of the Agenda

Dr. McManamon reviewed the meeting agenda (copy appended as Attachment 2 to the minutes). Besides getting to know one another, there were two major issues which needed to be investigated during the meeting. The committee would be reviewing the current draft of the regulations, identified as Draft Four. The committee also needed to develop a list of nominees from which the Secretary could appoint the committee's seventh member.

### Regulatory Process

Dr. McManamon introduced Mr. Hanslin, who outlined the regulatory process for members of the committee. Regulations implement the law -- explaining any ambiguities or gaps left by the statute -- but the regulations may not contradict the law. As you might imagine, Mr. Hanslin explained, that is not always an easy line to discern.

Mr. Hanslin's job, on behalf of the Secretary, is to make sure the regulations are consistent with the statute and other Federal law. He does this in two ways -- by assisting the Review Committee and by advising the Secretary. Mr. Hanslin pointed out that the Review Committee need not take his recommendations, they are entitled to make whatever recommendations they consider appropriate to the Secretary. However, once the draft Proposed Regulations are given to the Secretary, Mr. Hanslin's role is to review them on the Secretary's behalf. The Secretary has ultimate responsibility for their content. Once approved by the Secretary, the draft Proposed Regulations are sent to the Office of Management and Budget (OMB) to be reviewed under the Regulatory Reform Program. Part of this program has been the 90 day moratorium on new regulation, which is probably going to be extended for another 90 days. (The moratorium has subsequently been extended until November, 1992). Once OMB approves the regulations, they will be issued as Proposed Regulations in the Federal Register. Publication will include not only the entire text of the regulations, but also a preamble which in narrative form describes what the regulation is intended to do and defines a period during which public comment will be accepted. This period of public comment is typically no less than sixty days and, in the case of these regulations, probably longer.

Once all the public comments are received, the Review Committee, the Department, and the Secretary are obligated to review the comments -- not just read them -- but actually review them and respond in written form. The Secretary is obligated to make a public record to demonstrate that all comments have been considered fully taken into account. Following this comment and review process, Final Regulations will be developed and will again have to pass through OMB before they are published in the Federal Register. The preamble to the Final Regulations will discuss in general terms all the comments received and how they were dealt

with -- identifying which sections were changed and which were not, and justify why. All substantive issues raised by the comments must be dealt with in the preamble. Mr. Hanslin predicted that while the NAGPRA regulations themselves may not be very long, the preamble will be quite lengthy.

### Historical Background

Dr. McManamon updated committee members on the activities taken by the DCA and AAD thus far to implement the statute. He explained the leadership role this office provided for the Department of the Interior in the preservation and protection of Native American cultural items even before passage of the statute because of its oversight, leadership, and coordination responsibilities for archeological issues. Staffing was provided for Departmental representatives, such as in drafting testimony for officials appearing before Congress and responding to inquiries on these issues from the public. The DCA and AAD helped coordinate the activities of other bureaus within the Interior Department -- the Bureau of Indian Affairs, the Bureau of Land Management, the Fish and Wildlife Service, etc. -- as well as with other offices within the National Park Service like the Tribal Historic Preservation Office, the Curatorial Services Division, and the Ethnography Program. The DCA and AAD played a central role as the Native American Graves Protection and Repatriation Act moved through the Congress.

The DCA and AAD leadership role came from its expertise in several specific areas addressed by the statute -- site protection, site preservation, the treatment of remains from archeological collections, the treatment of archeological collections generally. The DCA and AAD also worked with Native American individuals and tribes on a number of issues, including providing training to tribes for protecting archeological sites on tribal land and also developed regulations on consultation with Native Americans. The Division was aware and sympathetic to many of the issues raised by the Native American community. The Division's expertise involves historic preservation issues, archeological issues, and scientific issues. One of the functions of the Review Committee is to insure that the Native American perspective is articulated in the regulations and in the review of disputes.

The statute was passed very late in the cycle for the Administration's FY92 Federal budget. It was impossible to get any additional funding for fiscal year 1991. Information was prepared to justify increasing the FY92 budget to allow for the formation of the Review Committee, drafting of the regulations, and supporting various activities. This effort succeeded due to the firm support of the Assistant Secretary and the Secretary.

Between March and August of 1991, the DCA and AAD worked on formally establishing this committee. This included drafting the committee charter, based on the statute, which was reviewed formally throughout the Department. The charter was approved by many of the assistant secretaries' offices and at least three separate parts of the solicitor's office. Mr. Hanslin reviewed it, as well as the assistant solicitor for general law and the assistant solicitor for Indian affairs. That review process is one of the requirements for establishing a formal Federal advisory committee. Without the charter, this committee would not exist. The charter was approved in August of 1991.

At the same time, the Secretarial Order was drafted, reviewed, and approved assigning the Secretary's responsibility to provide staffing for the Review Committee, to assist in assembling the nominations for the Review Committee, to draft the regulations, and to administer the grants program when funding is provided to the DCA and AAD.

Although no new funding for implementation activities was available, AAD was able to use what is called "lapse money," money for a position that had not been filled, to bring in one of our regional office staff to help. Larry Nordby, of the NPS Southwest Cultural Resource Center, performed admirably in this role. He drafted the charter and helped move it through the review process. He and Dr. McManamon also developed a paper which eventually appeared in October, 1991, as the memorandum on implementation of the NAGPRA. Comments on the draft memo were solicited from a wide range of Native American, scientific, and museum organizations and individuals. On the Native American side, comments were received from the Native American Rights Fund, the Association for Native Americans, as well as from a number of individuals who had been intimately involved in drafting the statute -- including Jack Trope, Karen Funk, and Dean Suagee. Comments also were received from the Society for American Archeology and other scientific organizations. We tried to integrate those comments into the memorandum. Mr. Hanslin and others at the Solicitor's Office reviewed the document. A good faith effort was made to integrate comments into the document.

Mr. Hanslin reminded the committee members that the October 30th memorandum was preliminary and subject to change within the regulatory process. Its purpose was to promulgate some information related to the statute to the public without having to take positions before the government and the review committee were ready to do so.

With the October memorandum as a foundation, Dr. McManamon continued, effort was devoted to putting down on paper an initial draft of the regulations implementing the statute. We asked a number of individuals from Federal agencies to help us in putting together this draft. We limited membership on the Interagency Working Group to Federal officials -- to do otherwise would have involved the complexities of forming yet another Federal advisory committee. Members were drawn from agencies with experience dealing with Native American issues, such as the Bureau of Indian Affairs, as well as land management agencies and agencies responsible for collections. The Interagency Working Group met twice, in December, 1991, and once in January of this year. The result of their efforts is what you have in front of you right now.

#### Review of NAGPRA Regulations: Draft 3

Review of Draft 3 of the Regulations opened with a general discussion of the importance of expedient action to fully implement provisions of the statute.

Dr. Sullivan stated that completing the regulations may turn out to be easier than anticipated, since many museums recognized the need for better communications with Native Americans even before the law was passed. What museums need now are guidance and examples. Dr. Walker concurred with Dr. Sullivan's call for expedient action, stressing that conscientious museums may start the summary and inventory process early, only to face the possibility of having to redo their efforts once the final regulations are completed. He went on to express his concerns that the grants program authorized by the statute has thus far not been funded. The lack of funding impacts upon the ability of museums to comply with the summary and inventory provisions by the deadlines stipulated by the law.

Mr. Tallbull raised the question of determining title of cultural items picked up by military officers during the various police actions against the Indian Nations during the 19th Century. Many chief's bundles and private medicine bundles were taken, and these are now in museums. If no one has formal title, than who owns them? Dr. McManamon explained that if a museum cannot demonstrate a right of possession through a receipt or an authorization to excavate signed

by a tribal representative, the title would go to the closest lineal descendent, culturally affiliated Indian tribe or Native Hawaiian organization.

Dr. Sullivan questioned including "human remains" within the definition of "cultural item." Dr. Walker concurred that this usage seems offensive, and questioned how much leeway the committee had to deviate from the statutory language. Mr. Hanslin responded by explaining that perhaps the best way to deal with definitions which are defined in the statute is to use the statutory language, but to use language from the committee reports, statements made on the floor of Congress, and the congressional reports to further clarify the meaning.

Mr. Tallbull stated that one of the most important issues raised by this statute concerns just what constitutes proper treatment and protection. These things are risky. He recounted a reburial he was asked to participate in of a man who lived seven thousand years ago. The man had been buried with his head to the west, facing north. Mr. Tallbull knew this practice, so he was comfortable doing the reburial. But suppose the man had been a "contrary." He would have done everything backwards, and whatever Mr. Tallbull would have done would have been exactly the opposite of what should have been done.

Dr. McManamon proceeded to read and explain the rationale behind each section.

#### § 10.1 Purpose

The committee members had no comments on this section.

#### § 10.2 Authority

The committee members had no comments on this section

#### § 10.3 Applicability

Dr. Walker asked about the status of cultural items recovered by Federal agencies but currently in the collections of the Smithsonian. Dr. McManamon explained that the Smithsonian's policy is that all material that has been accessioned will be considered the responsibility of the Smithsonian. The Smithsonian has expressed willingness to talk with individual agencies about who would actually be responsible for the cultural items. Dr. Walker and Dr. Sullivan suggested that Federal agency responsibility for their collections currently curated by museums needs to be made very explicit.

Ms. Craig asked about the applicability of the statute to lands controlled state or local governments. Dr. McManamon explained that provisions of the statute dealing with current excavations are limited to Federal and tribal lands.

Dr. Walker asked about the sentence "In the event that items were removed from Federal lands which later were transferred from the administrative control of one agency to another, the agency managing the lands at the time of the removal is responsible with the provisions of this Act with respect to those items, unless ownership of the collection has been otherwise conveyed."

Dr. Walker could not find any reference in either the statute or the draft regulations concerning the transfer of ownership of cultural items transferred from one Federal agency to another. Dr. McManamon explained that Federal agencies frequently switched management responsibilities. There are two ways to handle this. One way is to assign responsibility to the Federal agency assuming administrative control of the land. The other is to assign responsibility to the



Federal agency controlling the collection. This draft reflects the latter approach, since that is what the Interagency Working Group decided. Dr. Sullivan voiced his concern over the use of the term "ownership" in this context, preferring instead "control" or "custody."

#### § 10.4 Definitions

##### *(a)(4) museum*

Dr. Sullivan pointed out that representatives of the National Museum of Natural History have indicated that they would conducting their repatriation activities under provisions of this statute, despite the fact that they are explicitly excluded under this definition.

Dr. Walker asked what constitutes "receiving Federal funds". Mr. Hanslin explained that this is an issue that has litigated to the Supreme Court in terms of Title 11 funds. It seems clear from the present tense phrasing that the Federal funding must have been received after November 16, 1990. The question of local government museums that receive pass-through Federal funding from their city governments needs to be resolved.

##### *(a)(7) Indian tribe*

Dr. Walker asked for clarification of the phrase "eligible for the special programs and services provided by the United States to Indians because of their status of Indians." Mr. Hanslin explained this is a legal term of art which is precisely defined, though there will be some grey areas.

Dr. McKeown asked whether inclusion of Native Hawaiian organizations, which are recognized by their state but not by the Federal government, provides a precedent for including all State recognized tribes. Mr. Hanslin stated that no such precedent was established.

Dr. McKeown asked whether the tribes receive funds from other Federal agencies, such as from the Department of Health and Human Services, would also be included. Mr. Hanslin said that the definition includes funds from any Federal agency, not just from the Bureau of Indian Affairs.

##### *(a)(11) traditional religious leader*

Dr. Walker pointed out that not all tribes have traditional religious leaders as part of their government bureaucracy. Dr. McManamon explained that the statute required that traditional religious leaders be consulted regarding identification and proper treatment of cultural items, but that it was the Indian tribe and Native Hawaiian organization officials who were charged with making the ultimate decisions. This reflects the government to government relationship recognized between the Federal and tribal governments. Mr. Hanslin pointed out that the Federal agency and museum officials also must make sure that they are dealing with some legitimate representative of the Indian tribe or Native Hawaiian organization.

Ms. Craig took issue with the term "leader." She explained that in her area, many of the individuals who are recognized as experts in traditional religion by members of the community are not actual practitioners of the traditional religion. They follow traditional values. Mr. Tallbull suggested the term be changed to "elder." Dr. McManamon stated that the definition seemed to address everyone's concerns, while the term may be inappropriate. Mr. Hanslin explained that it was possible to change the term in the regulations, as long as it is stipulated that the term satisfies the statutory requirements for "traditional

religious leader." Dr. McManamon suggested that the review committee pay particular attention to the consultation section (§ 10.6) where procedures for identifying and contacting appropriate traditional religious leader are specified.

*(b)(2) associated funerary objects*

Ms. Craig wondered about hunting implements or beads that might be left with burials. Dr. McKeown explained that Navajo often leave utilitarian objects with or near their deceased owner. Contemporary Navajo still recognize that if they find an object, such as a spoon, on a site, that there is a burial nearby. Ms. Naranjo pointed out that the kinds of utilitarian objects left with burials is continuously changing. Dr. McKeown suggested amending the first category of associated funerary objects as follows: "cultural items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been intentionally placed with or near human remains."

Dr. Sullivan asked for clarification for second category. Dr. McManamon explained that category two includes those artifacts which were not found directly associated with human remains, but that are known from other studies of the prehistoric or historic culture to have an exclusive burial function. This might include a particular type of ceramic jar that was invariably used to hold cremated remains. Dr. Sullivan asked about utilitarian vessels which might also be used for cremations. Dr. McManamon pointed out that the term "exclusively for burial purposes" comes from the statute.

*(b)(4) sacred objects*

Ms. Naranjo suggested changing the wording of the first line of this to "specific ceremonial objects which are needed by ~~traditional Native American religious leaders~~ for the practice..." to reflect the previous decision on § 10.4 (a)(11).

Ms. Naranjo, Ms. Craig, and Mr. Tallbull questioned the necessity of having "present day adherents" to claim sacred objects. Dr. Sullivan commented that this definition was one of the toughest to work out, since everything in the world could be considered sacred. This definition was crafted to emphasize those items that have incredible power to Native people. Dr. McManamon stated that disposition of sacred objects would have to be worked out on a case-by-case basis. Dr. Sullivan pointed out that some of these items might also fall under the category of objects of cultural patrimony.

Dr. Walker commented that he was aware of situations in which Native Americans were reluctant to discuss particular sacred objects, making identification difficult. Mr. Tallbull confirmed this, saying that he had been in situations where he didn't tell all he knew because he knew the curators would not believe him. Dr. McManamon stated that this certainly was a problem which needs to be addressed, but suggested that generalized regulations might not be the proper place to do it.

*(b)(5) objects of cultural patrimony*

Ms. Naranjo pointed out that the Zuni War Gods might not be the best example here, as they are both objects of cultural patrimony and sacred objects. Mr. Tallbull detailed several Northern Cheyenne items which might be considered both sacred objects and objects of cultural patrimony. Dr. Sullivan mentioned that while some of the Iroquois' wampum belts had both sacred and patrimonial functions, others, such as the "Washington covenant" belt, were more documentary than religious items, being considered sacred in the same way that we consider the Declaration of Independence sacred. Dr. Sullivan suggested modifying the example to read "~~some kinds of~~ the Wampum belts of the

Iroquois,..." Mr. Tallbull and Ms. Craig pointed out that for their peoples, nothing was truly given or owned by an individual. Everything is cultural patrimony. Ms. Naranjo recognized that while it was not possible to change the language of the law, the distinction between sacred objects and objects of cultural patrimony is a fuzzy one.

*(b)(6) unclaimed cultural items*

Dr. McManamon explained that this term, which is not defined in the statute, was included in the regulations primarily to specify a time frame after which disposition of the cultural items which are not claimed might take place. Mr. Hanslin suggested amending this section to reflect the Federal statute of limitations. The last phrase should read: "...but which are not claimed for a period of five ~~six~~ years following notification."

*(b)(7) unaffiliated cultural items*

Dr. McManamon suggested amending the final clause to read: "...identified during or after the inventory or through a claim made by a lineal descendant, Indian tribe, or Native Hawaiian organization." He went on to explain that unaffiliated cultural items are most likely to be those for which there is not very much provenience information, those which are very old, those from areas where the prehistoric past is not very well known and where the modern Indian history has been quite disrupted, and those from areas where there are long gaps between the modern group that may have a legitimate claim and the older group that is only known archeologically. Dr. Sullivan posited that he felt the affiliation of nearly 90% of some collections would be determinable. Dr. Walker disagreed, thinking the percentage of affiliated human remains to be much lower.

*(d) ownership*

Dr. McManamon acknowledged the that several committee members were uncomfortable with use of this term.

*(d)(2) lineal descendent*

Dr. Walker suggest modifying the definition as follows: "an individual tracing his or her ancestry directly and without interruption to the individual whose remains and/or associated objects are being claimed under the Act."

*(d)(3) cultural affiliation*

Dr. Walker pointed out that one problem he sees in the draft regulations is that the concept of cultural affiliation shifts throughout the document, starting with an affiliation between tribes and previous cultural groups, but gradually shifting into referring to the affiliation between tribes and objects. Dr. McManamon encouraged Dr. Walker to comment on the language whenever he sees the term used inappropriately.

*(d)(4) prior ownership or control*

Dr. McManamon explained that while the term was used in the statute, no definition was given. This was an attempt to provide guidance on the term. Mr. Hanslin pointed out that his office will be paying particular attention to issues related to ownership and possession and that the committee members might expect this and other sections dealing specifically with ownership concepts to be changed significantly in the next draft. Dr. Sullivan objected to the first three words of the definition -- "ownership is established..." -- in that it implied a simple process of determination. Mr. Hanslin agreed, citing as examples of the complexity concerning the ownership of human remains, questions

of legal title, and Fifth Amendment takings. He suggested that one approach would be a definition of ownership that doesn't define it, but simply provides a framework for making decisions. He agreed to develop suggestions for resolving the issue.

*(e)(8) advice of discovery*

Dr. Sullivan pointed out that this term is used in several different ways within the draft and should be used consistently throughout.

*(e)(12) disposition*

Dr. Walker pointed out that the term is only used in 25 USC 3002 (d) dealing with inadvertent discoveries. Other usage in the regulations may be inappropriate.

§ 10.5 Consultation

*(c)*

Ms. Craig reminded the committee of the earlier discussion concerning "traditional religious leaders." She explained that in her area there is no such person, but there are people who are knowledgeable about traditional spiritual matters and religious values. She felt that the current definition would affect the consultation process in her area since there is no one who really fits the definition of a "traditional religious leader." Dr. McManamon explained that there are two ways to deal with the issue: 1) to add another term in this section identifying the appropriate contact person, or 2) to rework the definition in § 10.4 (a)(11)

Ms. Meninick addressed the committee from the audience, saying that she disagreed with what Ms. Craig had said. She explained that she was at the meeting on behalf of the Yakima Nation and that in her group there are traditional religious leaders, as well as elders who are teaching young people. She reaffirmed that traditional religious leaders should be notified and consulted. Dr. McManamon responded by pointing out that nothing that has been said would prevent traditional religious leaders from being contacted or being involved in the consultation process.

Ms. Naranjo stated that she had a problem with the word "identify." She suggested Ms. Meninick's choice of "notify" might be a softer word, at least for a Southwestern tribal elder. "Identify" implies by name. Notify is not so direct. Dr. McManamon explained that "identify" was used because the purpose of this particular subsection is to try to get additional information from Native people who you are already in contact with. A better word might be found, but "notify" probably not be enough. Dr. Sullivan suggested that perhaps the phrase could be changed to say consult with appropriate traditional leaders. Ms. Naranjo concurred.

Ms. Meninick asked about changing the word "should" to "shall." Dr. McManamon explained that the purpose of the section is to identify people who would be recommended for consultation. He continued that the intent was to try to increase the number of people who might be consulted. But there is no way of ensuring that everybody that is recommended would in fact be consulted. That would have to be a decision that would be made by whoever would be in charge of the particular institution undertaking the consultation.

Ms. Meninick asked about the term "other sources of expertise." Dr. McManamon explained that these sources might include non-Indian people who could serve as sources of information.

(d)

Dr. Walker suggested that "define" be changed to "adopt" or "use" or "implement." These consultation procedures should be implemented, not just written down.

#### § 10.6 Procedures for Consultation

Dr. Sullivan pointed out that "cultural items" should be deleted from the third line.

(a)(1)

Ms. Meninick suggested that the term "applicable" be replaced with "Federally recognized." Dr. Sullivan suggested deleting the term. Dr. Walker explained that he thought in this context "applicable" meant "potentially affiliated," and suggested making that change and then working on a definition for the latter term. Defining "potentially affiliated" in §10.4 Definitions will solve this problem.

(b) *Initiation of Consultation*

Dr. Sullivan asked about the third point in this section, that consultation must begin no later than five years from the date of enactment of the Act. Dr. McKeown explained that the five year deadline was designed to concur with the deadline for completion of the inventories. Some repositories may not have reached the point in their inventories where the cultural affiliation of cultural items is being investigated actively. However, consultation would need to begin by that date in order for the repository to qualify for an extension. He then suggested that perhaps the best way to clarify would be to delete § 10.4 (b)(3) and to rewrite (b)(1) and (b)(2) as follows:

- (b)(1) upon provision of written summary of unassociated funerary objects, sacred objects and objects of cultural patrimony to affiliated Indian tribes and Native Hawaiian organizations, and no later than November 16, 1993, or
- (b)(2) the point in the inventory process when the cultural affiliation of human remains and associated funerary objects is being investigated, and no later than November 16, 1995.

#### § 10.7 Procedures for Determining Right of Possession

Dr. Walker suggested changing the name of this section to "Priority of Claims," since "right of possession" does not play a role in the statute at all for human remains, only for funerary objects.

(a)(1)

Dr. Walker suggested deleting this section since it wouldn't seem to have any effect on human remains.

(a)(3)

Dr. Walker objected to use of the term "closest cultural affiliation," indicating that it is only used in provisions of the statute dealing with discoveries and excavations, and not to museum collections. The law requires a determination be made that a cultural object either is culturally affiliated or it is not. The degree of affiliation only becomes important when there are more than one claim, and the resolution of that type of dispute is left to the claimants. He

suggested changing this section to read "the Indian tribe or Native Hawaiian organization which has cultural affiliation with such remains or objects..."

(c) *Lineal Descent*

Dr. Walker suggested including examples to clarify this section. Ms. Craig pointed out that Native American conceptions of these "relationships" is much different from the Western, biological approach. Dr. McKeown pointed out that the important part of this definition is that it requires an unbroken chain of named individuals between the cultural item and the contemporary claimant.

(d)(2)(i)

Dr. Walker questioned use of the term "present day group" -- a term which is not defined in the statute or in the draft regulations -- and suggested changing the sentence to read "existence of an identifiable, present day Indian tribe or Native Hawaiian organization."

Dr. Walker questioned the use of subsection (A), (B), (C), and (D) as criteria for determining applicability of the statute to any particular Indian tribe when the statutory language indicates they must be "recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." He suggested that subsection (A) should be expanded to indicate what is required for Federal recognition. Ms. Craig and Ms. Naranjo affirmed that such expansion is not really necessary as both recognized and unrecognized tribes know their status. Dr. Walker questioned use of the BIA list, particularly in California where there are groups not on the list that receive Federal support. He didn't want to see all of these California group excluded from consideration. Mr. Hanslin suggested expanding (A) to read "Federally recognized tribes and those recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." Dr. Walker asked what types of non-BIA programs might be included. Dr. McManamon stated that he knew of at least three: the Association of Native Americans, the Department of Education for Indian education programs, and the Indian Health Service.

Dr. Sullivan objected to the wording of (C), suggesting it read "a listing of all current members and their addresses, establishing that a substantial portion of the membership constitutes a present-day Indian tribe or Native Hawaiian organization, and/or"

Dr. McKeown suggested that this we should probably go back to scratch on this section, looking at exactly what BIA, DHHS, IHS, and other Federal agency criteria are.

(d)(2)(ii)

Ms. Naranjo stated that, at least in the Southwest, the question of the existence of an "identifiable earlier group" is easy. Anasazi would be an example. But she didn't know if the rest of the country knew about Anasazi. Dr. Sullivan suggested that this also may be more difficult to ascertain the further back you go.

(d)(2)(iii)

Ms. Craig mentioned that in Alaska, her group's oral tradition indicates their relationship with sites from very long ago, while archeologists make distinctions between people that built their fires inside and outside the house. Dr. Walker explained that there might be traits found in sites associated with an identifiable earlier group that are also used by present day Indian tribes and



Native Hawaiian organization. That is one way to demonstrate the shared group identity.

(d)(3)

Dr. McManamon explained that this section provided guidance for resolving conflicting claims. Dr. Sullivan agreed that this type of guidance would be needed.

#### § 10.8 Procedures for Conducting Inventories and Developing Written Summaries

Dr. Sullivan suggested using examples to clarify the nature of the inventories and written summaries, but agreed in general that the section as written is at about the right level of specificity.

(a)(2) *Standards for Inventory Content*

Dr. Walker expressed his concern that the requirements were not practical. In particular he was concerned with the requirement that the inventory of human remains be done "by individual, or by skeletal elements when individuals cannot be identified." Dr. McManamon explained that he had recognized that problem, but that there was also an issue of accountability. The museum or agency must be able to identify what they have and tell the Indian tribes and Native Hawaiian organizations in some detail. This is the only time that the parties involved have an opportunity to describe the cultural items that might be changing hands. He went on to explain that this problem was recognized by Congress in that the statute authorized a grants program to help museums comply with this aspect of the law. He suggested that the committee not necessarily shy away from detailed inventory requirements because of a lack of resources. Dr. Sullivan suggested that the most important statement in the section was § 10.8 (a)(1), that "the inventory process must be flexible..." and suggested that one way to help solve the problem was to drop the phrase in § 10.8 (a)(2) "or by skeletal elements when individuals cannot be identified." Mr. Hanslin suggested that was also possible to prioritize the inventory process, to begin inventorying the materials you have reason to believe people are actually interested in. Dr. Walker added that this prioritization might also serve as one indication of the museum's good faith in responding to Native American concerns.

#### 10.9 Procedures for Repatriation and Disposition

(h) *Disposition of Federal property as part of a repatriation action.*

Dr. Sullivan identified this as one area which could prove controversial. He saw it as an extremely useful section because it makes clear that compliance with this law supercedes ordinary property disposition. Many private museums have objected that they can't do anything until their state's attorney general approves it.

Mr. Hanslin explained that this is one of the problems of this law. It can require anything it wants from a Federal agency, but it can't change state and corporate law. Museums are either going to have to resolve those problems in order to keep the Federal funding or stop taking Federal funding and obey state laws. Similarly, there have been problems where a private individual may have donated a item on condition that it be displayed at the museum forever. If the museum breaches that agreement they may be liable, and this law doesn't overcome those kinds of arrangements.

Dr. McManamon referred to Section 7 (f) which states that "any museum which repatriates any item in good faith pursuant to this Act shall not be liable..." Mr. Hanslin identified the particular provision as one that may cause problems and result in litigation. He stated that to the extent possible, the regulations must avoid taking peoples' property while, on the other hand, achieving the purposes of the law.

#### 10.11 Procedures for Determining Ownership

Dr. McManamon discuss two possible interpretations of 25 USC 3002 (a) on ownership in the statute, one which follows the priority order down the page: 1, 2a, 2b, 2c, ..., and another which views the priority as between 1 and 2, and within 2 to whoever has the best case. The current draft uses the second interpretation. The effect of this interpretation is to not give priority to tribal land owners in all cases. Dr. McKeown explained that use of the first interpretation also changes the nature of the consultation process on tribal land in that the Federal agency official only has to consult with the tribal land owners, and not with any Indian tribe that might be more closely affiliated with the remains or cultural items.

Dr. Walker pointed out that in § 10.11 (a)(2), the right of possession does not have anything to do with human remains.

#### Nomination of the Seventh Member

Discussions of individuals to be nominated as the seventh member of the committee were conducted on Thursday afternoon and Friday morning. Dr. McManamon outlined the statutory requirements for the nomination of the seventh member. The committee must provide a list of potential appointees that all current committee members "consent to," the phrase used in the statute. He recommended developing a list of at least five people, since they would each need to be contacted to determine if they might be willing to serve and one or two might drop out. It is important that the Secretary be provided with a genuine choice.

During the Thursday afternoon meeting, members discussed the factors which needed to be taken into account in nominating the seventh member. Dr. Sullivan pointed out that there currently is no one on the committee representing archeological concerns.

Ms. Craig raised the issue that there is no one on the committee from the Eastern United States. Dr. Sullivan also raised the issue of geographic representation, stating that committee would surely be criticized if another Arizonan were named. Dr. Walker suggested that, while this was a concern, the committee should nominate the people it felt were qualified and leave the politics of the final choice to the Secretary. In all, the members discussed 26 individuals and at the close of Thursday's discussion, developed a preliminary list of six persons. This list was telefaxed to Mr. Monroe on Thursday evening.

Dr. Monroe participated via teleconference with the rest of the members in Friday morning's discussion. At the request of Ms. Meninick, Ms. Naranjo asked Mr. Monroe whether he would be representing the interests of the Northwest Affiliated Tribes of the Northwest. Mr. Monroe indicated that he would need to build a working relationship with that organization. Each individual on the list was discussed and a vote taken. The final list which was consented to by all six members of the committee included:

Cecil Antone (Pima): director, Department of Land and Water Resources, Gila River Indian Community; spokesperson, Cultural Resources Working Group, Inter Tribal Council of Arizona; chairman, Four Tribes Cultural Concern Committee; member, Governor's Archeology Advisory Commission in Arizona.

David Cole (Chickasaw/Choctaw): director, Cultural Resources Department, Chickasaw Nation; president, Keepers of the Treasure.

Jonathan Haas, archeologist: Vice President, Collections and Research, Field Museum of Natural History.

G. Peter Jemison (Seneca): site manager, Ganondagan State Historic Site; chairman, Haudenosaunee Standing Committee on Burial Rules and Regulations; Eastern Regional representative, Board of Trustees, Keepers of the Treasure; member, ad hoc committee for Native American and Museum Collaboration established by the American Association of Museums.

Leigh Jenkins (Hopi): director, Hopi Cultural Preservation Office; member, Governor's Archeology Advisory Commission in Arizona.

Dr. McManamon proposed calling the five on the list to find out if they would serve on the committee. If they say yes, we will ask them to submit a statement which we will submit to the Secretary's staff. In transmitting the list to the Secretary, the concerns about expertise and geography that the committee raised would be mentioned. The members concurred.

Prior to ending the telephone hookup, Mr. Monroe proposed that in order for the committee to work effectively together it would make good sense to begin by saying that in the event that there is a very serious concern on the part of any member, the committee should recognize that concern. Dr. Sullivan agreed. Ms. Craig also concurred, stating that the committee will be working together for a long time. Mr. Tallbull summed up the general feeling by saying that while he had a lot of unspoken concerns of the heart, the committee has to develop a working relationship to try to resolve the long standing problems experienced by Indian people. He said that it is important that the members honestly, sincerely work together as a group. He hoped that the group had one thing in mind, to address the concerns of the people of this country, whether it be museums, archeologists, or Indian tribes. The committee must try to do its best to resolve the problems that may come up.

Mr. Monroe recommended that while each member had a certain constituency he or she represented, that it is critical that the committee develop a close working relationship with each other based on respect and based on appreciation for our common cause. He also recommended that future meetings not be held in Washington. He said that is important to let people have access to the committee, and to not make it appear that this is a remote committee whose activities always take place within the beltway. He recommended that meetings be held in other places where it will be possible for committee members to be accessible to people around the country. Mr. Monroe's recommendations were unanimously supported by the other members.

#### Deputy Solicitor for General Law

Dr. McManamon introduced Robert Moll, the Deputy Solicitor with the Division of General Law. Mr. Moll addressed application of the provisions of the Federal Advisory Committee Act (FACA) and its implementing regulations to the activities of the review committee. Mr. Moll explained that back in the 1970s, Congress recognized that Federal officials were meeting with many outside groups and the

public was unaware of the nature of those dealings. FACA set up a formal structure by which agencies would receive advice from outside groups. Under the statute, an advisory committee consists of any task force, group, or committee which is used in the interest of obtaining advice by the president or agency head. No advisory committee can function without a charter and all activities of advisory committee must be consistent with the charter. FACA and its implementing regulations place a number of administrative requirements on advisory committees: notice of all meetings must be published in the Federal Register; meetings are generally open to the public; all committee records, reports, transcripts, final reports and drafts are available to the public under the Freedom of Information Act.

Dr. Walker asked whether an individual member's notes must also be made available. Mr. Moll explained that anything that becomes part of the record of an advisory committee meeting would need to be made available. This might not include an individual member's notes if they were not made a part of the discussion. And, exemptions can be made for information of a private nature, such as discussion of a particular individual. That kind of information may be withheld.

Dr. Walker inquired about provisions for closing meetings, explaining that he could foresee a situation where the committee might need to discuss information which would include the location of specific archeological sites. Divulging this information might expose those sites to looting. Mr. Moll said that closed meetings are extremely rare. In fact, in his ten years with the Department of the Interior he could think of only one or two cases where closing a meeting was even considered. He suggested that the smartest way to deal with the situation would be to make sure the site coordinates were not discussed within the context of the meeting.

Dr. Walker asked Mr. Moll to clarify the nature of each member's liability when dealing with the type of contentious issues the committee will face. Mr. Moll explained that the committee serves in a strictly advisory capacity and does not make policy decisions. Virtually any conceivable suit filed against the committee would be handled by the Justice Department. He pointed out that the members have no authority to act individually, only as a committee. If someone calls asked for your recommendation as a member of the committee, you can share committee records, reports, transcripts, final reports and drafts with them. You can report what the committee has recommended to the Secretary. But you do not want to put yourself in the position as being thought of as the spokesman for the committee. You need to avoid a situation where someone gets in trouble and says that you told them to do it. Then they can come after you. Mr. Hanslin added that this will never be an issue unless you go well beyond the scope of your advisory role.

#### Deputy Assistant Secretary for Fish and Wildlife and Parks

Deputy Assistant Secretary Salisbury rejoined the meeting and fielded a number of questions from committee members. Both Dr. Sullivan and Dr. Walker expressed concern that deadlines for completion of written summaries and inventories were approaching while the regulations were still in draft form. Mr. Hanslin concurred, stating that it is typically 18 months from the time regulations go out as proposed to when they are published in final form. Ms. Salisbury suggested that perhaps interim guidance should be promulgated to assist Federal agencies and museum in meeting their responsibilities. Mr. Hanslin agreed. Dr. Walker added that another major problem was that the grants program had not been funded. Ms. Salisbury suggested the committee might contact various members of Congress to show how important this is.

Dr. McManamon asked the members to send their comments on the draft regulations

Ms. Craig asked to say a few things. She said that she thought this had been an important meeting. She explained that she was apprehensive when she arrived because she didn't really know what to expect. But she thought that after going through the process she was becoming comfortable -- getting to know the other members and the staff that the committee would be working with. She said that she was looking forward to the next meeting when she would not be so apprehensive, and said that she enjoyed this.

Ms. Naranjo stated that in the Indian way there is always a prayer at the beginning and the end of meetings. She suggested planning for this at future meetings and asked Mr. Tallbull to provide some guidance. Mr. Tallbull noted that in every meeting he had ever attended, Indians always end up doing the invocation.

The meeting was adjourned at approximately noon on May 1, 1992 by Dr. McManamon, the designated Federal official.

Lashel Craig  
Chair, Native American Graves Protection  
and Repatriation Review Committee

8-28-92  
Date



**MINUTES**  
**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION**  
**REVIEW COMMITTEE**  
**SECOND MEETING: AUGUST 26-28, 1992**  
**LAKEWOOD, CO**

The second meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Dr. Francis P. McManamon, Departmental Consulting Archeologist, at 9:18 a.m, Wednesday, August 26, 1992, in the City Lights Room of the Denver Sheraton West, Lakewood CO. The following Review Committee members, staff, and others were in attendance:

**Members of the Review Committee:**

Ms. Rachel Craig  
Dr. Jonathan Haas  
Mr. Dan Monroe  
Ms. Tessie Naranjo  
Dr. Martin E. Sullivan  
Dr. Phillip L. Walker

**Members absent:**

Mr. William Tallbull

**National Park Service staff present:**

Dr. Francis McManamon, Departmental Consulting Archeologist  
Dr. C. Timothy McKeown, NAGPRA Program Leader  
Mr. Hugh (Sam) Ball, Archeologist

**Other National Park Service personnel present:**

Mr. Robert Baker, Rocky Mountain Regional Director  
Dr. William Butler, Rocky Mountain Regional Office  
Mr. Edward Natay, Southwest Regional Office  
Dr. David Ruppert, Rocky Mountain Regional Office  
Dr. Larry Van Horn, Denver Service Center  
Mr. Frank Williss, Denver Service Center

**The following others were in attendance:**

Ms. Nancy Blomberg, Denver Art Museum  
Ms. Suzanne Casey, Colorado State Museum  
Dr. Susan Collins, Colorado Historical Society  
Dr. Jane Day, Denver Museum of Natural History  
Dr. Alan Downer, Navajo Nation  
Mr. Fred Fest, Peabody Coal Company  
Dr. Edward Friedman, Bureau of Reclamation  
Ms. Carol Gleichman, Advisory Council on Historic Preservation  
Ms. Kristine Haglund, Denver Museum of Natural History  
Mr. Jon Halverson, Denver Museum of Natural History

Ms. Joyce Herold, Denver Museum of Natural History  
Ms. Claudia Nissley, Advisory Council on Historic Preservation  
Mr. Stanley Pollack, Navajo Nation  
Mr. Alan Stanfill, Advisory Council on Historic Preservation  
Dr. Brit Storey, Bureau of Reclamation  
Mr. Jack Trope, American Association for Indian Affairs  
Ms. Teresa Wilkins, Colorado State Museum  
Ms. Cynthia Wood, Denver Museum of Natural History

Dr. McManamon advised the Committee that notice of the meeting had been published in the July 21, 1992 *Federal Register* and confirmed that a quorum of members was present. He explained that Mr. Tallbull was unable to attend due to illness. Dr. McManamon then asked Ms. Craig to offer an invocation.

### **Rocky Mountain Regional Director**

After the invocation, Dr. McManamon introduced Mr. Robert Baker, Director of the NPS Rocky Mountain Region. Mr. Baker explained that while he had served nineteen years as the regional director (in the NPS Southeast Region), he was new to the Rocky Mountain Region. His recent trips to parks in the six states of the Rocky Mountain Region had confirmed his thought that NPS properties preserve both the glories and the tragedies of the nation's heritage. In his recent travels, Mr. Baker had met with many Native American groups to discuss their perspectives on various parks. He looked to the Committee for additional guidance in protecting the region's, and the nation's, heritage. Mr. Baker also announced his intent to establish an Office of Indian Affairs within the regional office. After his presentation Mr. Monroe thanked Mr. Baker for taking time from his busy schedule to attend the Committee meeting.

### **Review of the Agenda**

Dr. McManamon reviewed the meeting agenda. Major items included: election of a Committee Chair, consideration of the draft Memorandum on Written Inventories and Summaries, discussion of major policy issues related to the regulations, development of dispute resolution procedures, and consideration of the request for intervention from *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*.

### **Chair Election**

The Committee discussed election of the Chair. It was decided to delay the election until the last day of the meeting to allow the members to get better acquainted. Dr. McManamon agreed to continue to serve as meeting facilitator until the new Chair was elected.

### **Memorandum on Written Summaries and Inventories**

Dr. McManamon introduced discussion of the Memorandum on Written Summaries and Inventories. The Committee had originally requested preparation of the document at their first meeting in Washington D.C. The Archeological Assistance Division of the National Park Service drafted the memorandum using the appropriate sections of Draft 3 and the comments which were received on



that document as models. The Committee focused their discussion on definitions and procedures outlined in the memorandum.

### *Lineal Descendants*

Dr. Haas expressed his concern over the definition of lineal descendant. He recognized that Native Americans define lineal descendants differently than the way he does. He regretted that Mr. Tallbull was not present for the discussion because the Tallbull pipe was one of the best examples of the difficulties in identifying lineal descendants. The Tallbull pipe is at the Smithsonian Institution and there has been a request for its return. There are about 65 living descendants of the person who originally owned the pipe, including Committee Member Mr. Bill Tallbull. However, the Cheyenne reckon the ownership of objects such as pipes and medicine bundles through the youngest male of the family, so of the 65 initially identified descendants, only two are probably proper descendants.

Dr. Haas stated that notification of lineal descendants presents museums with a problem. He commented that requiring a museum, which might have collections from 200 different Indian Tribes, to notify all lineal descendants would be a multi-million dollar task. As an example, he recounted that when the Field Museum of Natural History repatriated human remains to the Blackfeet, Tribal officials asked if there was any information about individuals. There was none. The Tribal officials then asked about geography, and the museum responded that some of the remains had been shipped from a particular railroad station. The Tribal officials knew who had lived in that particular area and agreed to pass the information on to the descendants. In conclusion, Dr. Haas thought that Draft 3 placed a far greater burden on museums than is inherent in the statutory language. Dr. Sullivan added that Section 6 of the statute, which deals with summaries, does not contain the phrase "lineal descendant."

Dr. McManamon explained that the term was included in recognition of the priority lineal descendants have in repatriations. However, he added, a museum obviously cannot provide information that it does not have. Dr. McKeown suggested that the museum be required to convey the collectors' names and other pertinent information related to the original collection of specific items to culturally affiliated Indian Tribes. The Tribes would be best able to identify lineal descendants.

Ms. Craig offered that in her area it was easy for Native Alaskan groups to find out who was related to someone because many of the villages were beginning to document their family trees. Even villages that were relocated by the BIA, for example, can call back to their original area to obtain information. Having the museum provide what information it has to Tribes would fulfill the Congressional intent of getting museums and Indians working together.

Dr. McManamon summarized the Committee's recommendation to drop references to museums' need to identify lineal descendants in the introduction and in the sections on summaries and inventories. Dr. Walker added that there should be a section outlining the kind of process discussed by Dr. Haas and Ms. Craig where museums and Indian Tribes cooperate in identifying lineal descendants.

## *Indian Tribe*

Dr. Walker pointed out that in California there is a great deal of concern about how the term "Indian Tribe" will be defined in the regulations. Dr. Haas indicated that his understanding of legislative intent was that the term included a very broad range of groups that were somehow eligible for Federal programs. Mr. Monroe concurred that the intent of the drafters was to recognize those Indian Tribes that had been disenfranchised in the 1950s. Dr. Walker pointed out that it was also important to not make the definition overly broad so that anyone who received health care services from a Federal agency could make a claim. Dr. McKeown pointed out that in one of the earlier versions of the bill the term was defined with a reference to the American Indian Self-Determination Act. In the final statute the reference was replaced with the verbatim text from the Self-Determination Act. The important point is that at the time the statute was passed Congress knew that the concept of Indian Tribe in the Self-Determination Act was being interpreted to mean only those groups recognized as eligible for Federal services by the Bureau of Indian Affairs.

Mr. Monroe asked Mr. Trope, a member of the public, to address the issue. Mr. Trope indicated that he had represented the Association of American Indian Affairs during negotiations prior to passage of the statute. He stated that the definition had been left ambiguous because detailed explication of the many issues involved would have probably killed passage of the bill. From his perspective, non-BIA recognized groups that had received services from other Federal agencies, like the Administration for Native American, should probably be included. Individuals receiving health benefits would not be included. He predicted, however, that much of the discussion was moot because the Department of the Interior Solicitor would probably propose the narrowest possible definition based on the philosophy that the term "Indian Tribe" is applied in many other areas. He questioned how the Committee would want to deal with this situation.

## *Human Remains*

Dr. Sullivan raised the issue of the definition of human remains. He explained that some objects with diverse purposes have been made from teeth or bones and should be exempted from this category. Dr. Haas offered examples of a necklace of drilled teeth and human hair that had been incorporated into a doll or weavings. Dr. Sullivan proposed a distinction between teeth or hair which had been "harvested" from a living person and the later use of parts taken from a dead person. Dr. Haas wondered to whom scalps should be returned. Ms. Naranjo suggested that both the teeth necklace and scalps should be considered human remains. She suggested that objects such as a scalp shirt should be repatriated to the maker's people since it is possible to identify them and, in many instances, the scalp has taken on an important role in the ceremonies of that group. Ms. Craig disagreed, thinking the scalp still belonged to the deceased individual and should go back to his people. Dr. Walker recalled that during one of the Congressional hearings the Antique Tribal Art Dealers Association had brought up the issue of scalps but that their points seemed to have had little effect on Congress. At this point Mr. Monroe asked if Jack Trope could again be recognized.

Mr. Trope remembered that the issue of finger bone necklaces had come up during the negotiations and it was clear at the time that there was no way Congress was going to exclude them. The Antique Tribal Art Dealers Association had raised the issue, but their perspective was disregarded. Concerns raised regarding human teeth and hair are part of a legitimate gray area which was not discussed.

Mr. Trope then suggested that this was an area where the Native Americans on the Committee -- Mr. Tallbull, Ms. Naranjo, and Ms. Craig -- will have to provide a lot of guidance. Concerning the "right of possession" to human remains, Mr. Trope stated that the only application of the concept was in the trafficking provisions. If a museum has human remains, and they are culturally affiliated, they must be returned.

#### *Associated Funerary Objects*

Dr. Sullivan commented that the second part of the definition -- cultural items "exclusively made for burial purposes or to contain human remains" -- is very vague. Dr. Haas raised the issue of "burial moccasins" that are commonly believed to have been made exclusively for burial but, when examined, reveal wear patterns on the bottoms. Dr. Sullivan questioned whether the groom's plaque and bride's robe (Hopi?), which are supposed to be interred with them upon their death, would be included. Dr. McKeown raised the issue of ceremonially "killed" pots, which Dr. Haas rejected since he could show in some cases such pots do not occur in burial contexts.

#### *Sacred Objects*

Dr. Haas raised the issue of whether objects needed to renew ceremonies should be included in the definition. He recalled that the sentence dealing with that type of objects had deliberately been taken out of the statute. Dr. McManamon indicated that the language in the definition had been taken from the Senate Committee report. Dr. Sullivan suggested that the term be rewritten to recognize only those situations where a ceremony could not be renewed because a necessary object was in a museum. Mr. Trope commented from the audience that his recollection was that objects needed to renew ceremonies were to be considered sacred objects. The key part of the definition was that there had to be present-day adherents to the religion.

#### *Scope of the Summary*

Mr. Monroe raised the issue of exactly what items must be included in the summaries. Quoting from Section 6 of the statute, he said it appeared that the summary should present information on just the unassociated funerary objects, sacred objects, and objects of cultural patrimony in a museum's collection. This was not the drafters' intent. Their intent had been for museums to communicate to the Tribes, in a simple narrative form, broad categories of objects within their collections. This approach was chosen because museums are generally not in a position to determine what is a sacred object or what is an object of cultural patrimony. Further dialogue between the museum and particular Indian Tribes would then identify particular sacred objects and objects of cultural patrimony. This point must be resolved as few museums can or should identify sacred objects or objects of cultural patrimony.

Dr. Haas concurred that some of the statutory language appeared to indicate the summaries would only include unassociated funerary objects, sacred objects, and objects of cultural patrimony. He then proceeded to give two examples of why this approach was not appropriate. The Field Museum repatriated some objects to the Blood Tribe of Canada. The museum had looked through the catalogue of its collection and noted pipes, flutes, bowls, baskets, bags, and a variety of other items as objects of possible interest to the Tribe. The museum also noted objects designated "sacred fawn

skins". When the two Blood religious leaders came to the museum, they paid no attention to the fawn skins, picking out instead some very small bundles that had been listed as "bags of buffalo stones". They prayed over the bundles for approximately ten minutes. When museum officials asked about the bundles, the Blood leaders replied they were not going to tell the museum, because they were not supposed to know. The Blood leaders also selected a metal rifle barrel that had been made into a flute. It turned out to be a very important item for certain ceremonies and one of only two known in all Blood material culture. The leaders also choose one bowl from the thirty in the collection. The bowl was a berry bowl necessary for certain ceremonies.

Dr. Haas' second example concerned the Iroquois. The Field Museum knew that the Iroquois were interested in the masks in its collection. When the Iroquois arrived, they also asked to see peach pit games, which the museum had not identified as sacred. The Iroquois were not concerned with turtle rattles, which the Museum understood to be of religious significance, and recommended that they be kept on display. However, two months later, the Tribe wrote back and said that they had talked it over and would like the turtle rattles removed from display.

Dr. Haas summarized that in general the Tribes do not want museums determining what are sacred objects and what are objects of cultural patrimony. They want to know what a museum has, they want to look at the collection, and then they want to return and identify the particular objects they are concerned about. Anything else will ensure mistrust between museums and Indian Tribes.

Dr. Sullivan concurred that the intent of the statute was to get information exchanged. He identified the second sentence of Section 6, paragraph (a) of the statute to support this approach for dealing with sacred objects and objects of cultural patrimony. Unassociated funerary objects might have to be dealt with differently. Dr. Haas disagreed that unassociated funerary objects should be dealt with differently, citing as example an Iroquois visit to the Field Museum when religious leaders were able to identify a particular pipe which is not found outside a funerary context.

#### *Summary Notification*

Dr. Haas raised the issue of various levels of specificity within summaries. He cited as example a request the Field Museum had received for information on materials from the Northern Rio Grande Pueblos. The museum responded that it had the following materials from particular pueblos. In addition, the following materials came from "New Mexican pueblos", and the following materials came from "New Mexico". On the other hand, he continued, nearly all of the museum's Apache material is catalogued simply as "Apache", even though there are ten different Apache groups. Dr. Haas explained that the museum will probably send the same list to all of them.

Ms. Craig stated that it will be very important for museums to include information on when objects were purchased or collected and by whom because Native Alaskans know which villages were visited by particular collectors. Ms. Naranjo added that for Pueblo people, objects made of stone might be of particular importance. Just seeing "stone object" in the summary might peak their interest.

Dr. Sullivan suggested including a sample summary as part of the memorandum. Dr. McKeown suggested that rather than using a specific summary as an example, a generic example might be created. After discussion between Drs. Sullivan, Haas, and Walker, Mr. Monroe, Ms. Naranjo, and

Interim Chair Craig, the Committee suggested the following guidelines: Provide as much information as is possible given the available documentation in a museum's possession; provide a summary of collections and existing information; do not make judgments about what are sacred objects and objects of cultural patrimony. Dr. Haas also suggested being as specific as possible by using terms such as "drum" or "flute", not terms such as "items of personal adornment".

### *Scope of the Inventory*

Dr. McManamon opened discussion by identifying the two reasons behind the current approach. First, it was felt that detailed information on each object would be needed to assist in cultural affiliation determinations. Second, this information would be necessary to ensure all parties have a clear understanding of exactly what is being repatriated and what is being retained by the museum. Dr. Sullivan divided the listing of required information into two categories, information which should be readily available to most museums, and information which may not be available. He raised the question of whether information from the second category should be required since, if it were, it would entail additional studies and costs to museums. Mr. Monroe pointed out limitations imposed by the statute on the kinds of information that can be used for these purposes, i.e., no additional research. Dr. McManamon pointed out that the information in this part of the regulations was an attempt to systematize the requirements so that museums would all provide the same kind of information to the Tribes. Dr. Sullivan and Mr. Monroe pointed out that if the regulatory requirements are such that a grants program is necessary to fully comply and the grant program is not funded, implementation of the law may be stymied.

Dr. Haas pointed out that there are great difficulties in identifying the cultural affiliation of many of the remains currently in museums. Neither the museums nor the Native Americans want to repatriate or have repatriated individuals that are not related to the group receiving the remains. Dr. Haas recounted an example of 72 Blackfeet remains that were held by the Field Museum. After examination, it was determined that 71 were Blackfeet and one was not. Dr. Haas stated that it is an issue of great difficulty, nobody wants to give or receive remains that are not related to the people receiving them. Dr. Walker related an example of a collection from a 3000-year-old California site which included an historic Hispanic burial. Dr. Sullivan summed up the conversation on this point by saying that this kind of additional information is critical to decisions regarding repatriation, but is not appropriate in an inventory.

The general consensus of Drs. Sullivan, Haas and Walker and Mr. Monroe was that there would be relatively few clear identifications of cultural affiliation and that the majority of cases would be more ambiguous, requiring further analyses to verify identifications to the satisfaction of the Tribes and the museums. Dr. McKeown pointed out that there were two ways to proceed: Either require morphological documentation of the remains or not. In the first instance, cultural affiliation will be determined in the majority of cases. In the second, the majority of cases will not be identified as culturally affiliated. Drs. Sullivan, Haas and Walker agreed and stated that the cost of doing the kind of documentation under discussion was high and could only be accomplished with an authorized grant program. Without the grants, most museums will not be able to undertake that kind of work. Indian Tribes will also not be able, or in some cases willing, to receive unidentified remains because they will not know if the remains are related to them.

Dr. Sullivan recounted that the Heard Museum had attempted to repatriate 19 cremation jars to the Gila River Indian community. Two of the jars were found to contain remains of a person much younger than the five to eight hundred-year-old jars. A third jar contained the remains of a bighorn sheep. The Gila River community was willing to take responsibility for reinterring all of the human remains. Consultation between the community and the museum revealed information about the collections and the attitudes of the Gila River community.

Dr. McManamon raised the issue of data requirements and proposed inclusion of the required and optional sections. He explained that the central issue was to ensure that the remains go back to the appropriate group while allowing the consideration of the widest spectrum of data. He also pointed out that because the memorandum represented guidance and not regulations, all the language needed to be conditional. Mr. Monroe urged using the phrase "strongly encouraged" throughout the memorandum. Ms. Naranjo concurred. Dr. McManamon continued that the first cut is to be made with "available" information. Decisions would then be made in consultation with the culturally affiliated Indian Tribes as to what further steps were necessary, appropriate, and agreed to by both parties.

#### *Format Requirements*

Dr. Haas raised the issue of the computer format requirements, stating that most, if not all, of the smaller museums do not have computers. Many smaller museums will not even understand what an ASCII format is.

#### *Flowchart of Determination of Cultural Affiliation Process.*

Discussion then moved to the flow chart attached to the Memorandum as Attachment 1. Several Committee members indicated the chart was difficult to read. Ms. Naranjo felt that it was too confusing and urged that it be removed. Dr. McManamon stated he felt it was needed for those people who would use charts like this. Dr. McManamon offered to put a warning label on the chart cautioning users about the difficulties of using it. Several suggestions for changes were made to make it clearer. Mr. Monroe suggested removing any references to the rare cases where Europeans were adopted into Indian Tribes and Dr. McManamon agreed.

The Committee then discussed what steps they could take to facilitate the approval process for the memorandum. After a short discussion, the Committee unanimously approved the content and intent of the memorandum and indicated that clear mention in the minutes would be satisfactory.

#### **Draft Regulations**

Dr. McManamon was asked to outline the necessary steps for the promulgation of the proposed regulations. He indicated that a number of written comments had already been received on Draft 3. He invited the Committee to make their recommendations. Following the Committee meeting, a revised Draft 4 would be developed. This Draft would initially be reviewed by the Department of the Interior's Office of the Solicitor, probably by Mr. Lars Hanslin, a very experienced lawyer in that office, and then forwarded to the Committee for consideration at their next meeting. Once the Committee agrees, steps would be taken to publish proposed regulations in the *Federal Register*.

Mr. Monroe asked if he could see the written comments and the results of the Solicitor's review as soon as possible. Dr. Walker seconded that request, adding that he understood that the Solicitor's changes would be hard to oppose.

Mr. Monroe asked which issues the Solicitor wanted to address. Dr. McManamon thought they would include the definitions of Indian Tribe, museum, tribal land, and right of possession. Dr. Haas suggested that the penalty section would also need the Solicitor's review. Dr. McManamon agreed and Dr. McKeown added that the criminal penalties would not be included in the regulations as Department of Justice has jurisdiction.

Dr. McManamon proposed a schedule to complete Draft 4 by the end of September for discussion with the Committee at the next meeting in November. Mr. Monroe stated that he felt the situation was more urgent than that. He proposed that the Committee work on the existing draft and have the next meeting in early October. Mr. Monroe also urged that the meeting be moved to occupy part of the weekend because the Committee members had many other duties and needed the extra weekday.

Dr. Haas asked that the location be chosen to encourage public participation, especially by Native Americans. Ms. Craig commented that she thought it would be necessary to provide better notification. Dr. McKeown explained he had worked through the Colorado State Indian Commission to notify every Indian Tribe in Colorado of the meeting. Mr. Monroe suggested that it would be better to contact the groups directly. Ms. Craig stated that you can invite Indian people, but you cannot be sure that they will come.

#### *Cultural Affiliation*

Dr. McManamon mentioned that one of the central comments concerned the process and the information requirements for determining cultural affiliation. Dr. Walker indicated his unease with the statutory definition of cultural affiliation. He had particular trouble with the emphasis on biological kinship determination (i.e., based on osteological examinations). Some groups adopted people of different ancestry as a common practice. Biological identity and cultural identity are very different. Ms. Naranjo stated that in Pueblo society, biological identity was most important. Cultural experience was secondary to birth in determining membership.

Dr. Walker discussed the nature of culture as defined in anthropological terms and stated that most decisions on cultural affiliation would be made by people with anthropological backgrounds. Mr. Monroe challenged Dr. Walker's statement. After Dr. Walker clarified the types of institutions he was including, both agreed that the majority would have an anthropologist on staff. Dr. Sullivan pointed out that the definition of cultural affiliation used in the statute is somewhat different from the classical anthropological definition. The statute uses the term to define who has the right to make a claim for an object. Dr. McManamon referred the members of the Committee back to the definitions in Draft 3 which require the existence of a shared group identity between a present day Indian Tribe or Native Hawaiian organization and an identifiable past group. Dr. Walker highlighted the difficulty in this task.

Dr. McKeown pointed out that the first step was to determine if the human remains or cultural objects were Native American. Only after that question was answered would cultural affiliation come into play. The Committee will be required to recommend disposition for unaffiliated remains, even if no determination of cultural affiliation has been made. Dr. Haas and Mr. Monroe asked where this process might lead. Dr. McManamon responded that the regulations only specified the kind of information that must be included in the inventory not how the determination of cultural affiliation was to be done. Dr. Sullivan referred to a comment on Draft 3 as an example of clearer language for describing this kind of information and urged the staff to adopt a similarly structured approach. Dr. Sullivan then asked for clarification of the statement in the Draft 3 on how cultural affiliation is established. Dr. McKeown explained that the three categories were to encompass biological data (i.e., osteological data), cultural data (i.e., archeological and anthropological data), and a category to encompass history, folklore and other similar kinds of evidence enumerated in the law.

Dr. Haas suggested the Committee disregard the draft regulation sections concerning determination of cultural affiliation at this point in their deliberations and reformat the section of the memo to include the relevant portions of the regulations without wholesale incorporation of the regulations' language. Dr. Walker suggested dividing the section into three problems to be solved: 1) what documentation was available to the museum for making determinations of cultural affiliation; 2) what was the nature of the object in question; and 3) what information was available to the Tribe.

Mr. Monroe suggested that there was very little chance that guidelines could be created to cover all cases. He urged keeping the procedures as simple as possible. Dr. Walker reminded the Committee that the statute required museums to use existing information and that preponderance of evidence was the statutorily defined standard. Dr. McManamon suggested that the object itself would serve as the documentation. Dr. Haas pointed out that there was always the option of determining an object to be unaffiliated if the existing information is not adequate. Many cases may come down to that.

#### *Civil Penalties*

Mr. Monroe asked where the section on civil penalties had originated. Dr. McKeown stated that he had three considerations, having to do with legal definitions of value, in mind when he wrote this section: 1) archeological value; 2) historic value; and 3) commercial value. Dr. Haas asked about the potential loss of Federal funds by non-complying institutions, indicating that this penalty was very light in some cases and extreme in others. He also stated that the statute's framers had explicitly excluded the loss of Federal funds from possible penalties. Mr. Monroe questioned how to create a section that had enough teeth to discourage violation of the statute. Dr. Haas mentioned the strong penalties associated with the Archaeological Resources Protection Act (ARPA). Dr. McManamon agreed that this was the case. Dr. McManamon then stated that ARPA had been used as a model for this section, but that he was open to different approaches. He also explained that the NAGPRA staff had used the Rare & Endangered Species Act as a model for civil penalties. Dr. Haas questioned the use of "commercial value" in determining civil penalties asking if, for instance, there was a legal market for eagle feathers.

#### **Dispute Resolution Procedures**



Dr. McManamon explained that a request had been received from *Hui Malama I Na Kūpuna 'O Hawai'i Nei*, a Native Hawaiian organization recognized by the statute, for the Committee to review a dispute. Dr. McManamon summarized the situation to date, emphasizing that the Review Committee needed to first consider procedures for handling such disputes. Second, he suggested that the Committee decide whether to review this dispute now or to postpone the consideration until either further data are available or until procedures are in place. Dr. Sullivan suggested a formal notification process for all parties in a dispute. He also suggested that all parties should have an opportunity to submit documentation to the Committee and were entitled to see the information submitted by other parties. Dr. Haas noted that minimum time frames needed to be established to allow parties to respond to any requests for information or to send representatives to Committee meetings. Dr. Walker pointed out that if all parties were allowed plenty of time to consult then solutions might be found before it became necessary for the Committee to intervene.

Mr. Monroe outlined a possible dispute resolution process which was then discussed. The Committee agreed to a two-part procedure. A request to review a dispute would first be received by the DCA. He would consult the Chair and together they would determine if the Committee should consider the dispute. If not, then a letter would be sent to the requesting party explaining the decision. If a decision was reached to accept the dispute for consideration, then letters would be sent to all parties to the dispute asking for written statements outlining their understanding of the issues and requesting the identity of other parties that might have an interest in the dispute. The Committee would then review the dispute at a regularly scheduled meeting and make a recommendation to the disputing parties. If, after working through the proposed solutions, the parties could not come to an agreement, they could resubmit the dispute to the Committee. After deciding if the dispute should be reconsidered, the Committee might rehear the issues at a regularly scheduled meeting and issue a finding.

The majority of discussion concerned how the Committee would determine which parties should be considered. It was decided that identifying the parties was the responsibility of the museums and the Indian Tribes. While the Committee should ask if there were other parties with potential interest, it was not their job to seek these parties out.

Timing the receipt of disputes and scheduling them for consideration by the sitting Review Committee was extensively discussed and a cutoff date of 30 days before a regularly scheduled meeting was adopted. The Committee agreed that they needed time to fully consider the materials submitted in any dispute.

#### **Election of the Committee Chair**

Dr. Haas expressed the opinion that the Committee needed an Indian voice to lead it. Much of the Committee's future work would be in the resolution of disputes and he felt the Committee needed a Native American's view to guide it. Ms. Naranjo disagreed, suggesting that the duties of the Chair should include a practical, common sense approach to facilitating the meetings, keeping things simple and moving things along. She stated that she thought that a Native American viewpoint was not necessary and suggested Mr. Monroe. Mr. Monroe agreed with Ms. Naranjo's position, but indicated that he felt that he could not devote the time necessary to the position. Ms. Craig offered her support for Ms. Naranjo as Chair. Ms. Naranjo stated that she wanted to withdraw from

consideration for the first term. Mr. Monroe suggested that if Ms. Naranjo was currently unwilling to serve the Committee could elect an Interim Chair and she could re-consider the position at the next meeting. The Committee then selected Ms. Craig as Interim Chair.

#### **Next Meeting**

Ms. Craig suggested the Committee consider the time and location of the next meeting. After some discussion, the meeting was scheduled for October 8-10, 1992 in Florida in order to accommodate the Committee's wish to move expeditiously on the proposed regulations and to accommodate members' travel plans.

#### **Public Comment**

Dr. Susan Collins, Colorado State Archaeologist and Deputy State Historic Preservation Officer, raised five points for the Review Committee's consideration. Her first issue concerned the identification of Indian Tribal representatives. Dr. Collins indicated this information was generally unavailable and urged publication of a central list of representatives designated by Indian Tribes. Secondly, she inquired whether the Committee was considering a statute of limitations on claims by Indian Tribes and what effect such a limitation might have on the legal status of collections; specifically, was the repatriation effort intended as a one time event or will it be an ongoing process? Related to this issue, Dr. Collins asked if it would be possible for a museum to continue to curate cultural objects if requested by a claiming Tribe. Thirdly, Dr. Collins asked if museums would be required to make judgments concerning the cultural affiliation of Indian Tribes to older archaeological collections. Finally, she requested guidance on the status of ownership of objects originating on tribal lands. Dr. Collins suggested that the link between ownership or cultural affiliation of cultural items may be tenuous and proposed that the regulations needed to expand on these issues. Dr. Collins also raised the issue of coordination between Section 106 of the NHPA review and the NAGPRA process. She asked the Committee to provide guidance on this issue as quickly as possible, because a consistency problem was already surfacing as different Federal agencies went in entirely different directions. Dr. McManamon stated that would be covered in Draft 4 as a result of comments received on Draft 3. Dr. Collins further suggested the utilization of state Indian Commissions in the consultation process.

Dr. Alan Downer, the Navajo Nation Historic Preservation Officer, stated that he believed the Navajo position on the reburial of hereditary enemies on Navajo land and the burial of Navajos on enemy land was quite clear. The Navajo wanted the burials reinterred as soon as possible and he speculated that the Hopi would feel the same way. Dr. Downer then pointed out that he disagreed with Dr. Haas's contention that repatriation was the primary goal of the statute. Dr. Downer stated that the law and its regulations have significant consequences for management on Federal and Tribal lands. He suggested that procedures for Federal and Tribal lands should be separated out in the regulations because of the great differences in the management of the two classes of lands. He then strongly urged the Committee to continue to refer back to the statute for regulatory language. Mr. Monroe asked Dr. Downer what specific issue he was referring to. Dr. Downer responded that he was worried about the issue of Tribal sovereignty over archeological sites on Tribal land when another group could demonstrate by a preponderance of the evidence that they had a connection with the sites.

Dr. Brit Storey of the Bureau of Reclamation, outlined the difficulties Federal agencies are having in identifying the museums holding their collections. Many museums are unaware of which artifacts belong to the Federal Government as the artifacts cannot be related to their points of origin until the records are traced. Dr. Walker responded by questioning whether cultural objects from Federal lands that are currently in the Smithsonian were covered by the National Museum of the American Indian Act (NMAIA) or NAGPRA. Lastly, Dr. Storey cautioned the Review Committee that if the 30-day shutdown period (after inadvertent discoveries of human remains or cultural items) was allowed to stand, field people would stop reporting discoveries.

Mr. Edward Natay of the National Park Service, Southwest Regional Office, urged the Committee to consider fostering face-to-face contact between museums and Indian Tribes. Some Indian Tribes have strong historic preservation programs, but those Tribes which do not may be unable to respond to just a letter of notification. Even those Tribes with historic preservation programs may have problems representing the views of all the people of the Tribe. He emphasized again that direct, face-to-face contact was important to successfully comply with NAGPRA. As a second point, Mr. Natay urged the Committee to consider that many Indian Tribe officials are only in office for a year. Decisions to claim or not to claim human remains and cultural items may be reversed with a new government. Mr. Natay raised the issue of Indian Tribes laying ancestral claim to pottery discovered over a broad geographic area. He cited the example of an agreement between Mesa Verde National Park and the Zuni and Hopi Tribes in which the Indian Tribes claim the Anasazi inhabitants of that area as ancestors. Ms. Naranjo asked Mr. Natay to talk about the relations between the Pueblos and the Anasazi ruins in and around the Navajo Reservation. Mr. Natay replied that some Pueblo groups are ready to deal with this issue and some are not. He urged the Committee to take this situation into account when devising methods for handling repatriation requests, particularly when devising a statute of limitations. Dr. Haas asked Mr. Natay for some specific recommendations as applied to his situation: 200 groups to contact and a very small staff to handle the task. Mr. Natay reiterated his suggestion that personal contact was the best approach.

Dr. Jane Day of the Denver Museum of Natural History asked what had happened to the Grants program authorized in NAGPRA. Dr. McManamon replied that there had been no appropriation of funds to cover this program in the FY '93 budget. The Committee then discussed practical methods of attempting to convince Congress to appropriate funds.

After closing statements, including a "Good Saying" by Ms. Naranjo in her native Tewa, Interim Chair Craig adjourned the meeting at 3:25 pm August 28, 1992.

Approved:

Tessie Naranjo

Tessie Naranjo, Chair  
Native American Graves Protection  
and Repatriation Review Committee

March 28, 1993

Date



**MINUTES**  
**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION**  
**REVIEW COMMITTEE**  
**THIRD MEETING: OCTOBER 8 - 10, 1992**  
**FORT LAUDERDALE, FL**

The third meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Acting-Chair Rachel Craig at 9:00 a.m, Thursday, October 8, 1992, at the Sheraton Yankee Trader Hotel, Fort Lauderdale, Florida. The following Review Committee members, staff, and others were in attendance:

**Members of the Review Committee:**

Ms. Rachel Craig, Acting-Chair  
Dr. Jonathan Haas  
Mr. Dan Monroe  
Ms. Tessie Naranjo  
Dr. Martin E. Sullivan  
Mr. William Tallbull  
Dr. Phillip L. Walker

**National Park Service staff present:**

Dr. Francis McManamon, Departmental Consulting Archeologist  
Dr. C. Timothy McKeown, NAGPRA Program Leader  
Mr. Hugh (Sam) Ball, Archeologist

**The following were in attendance during some or all of the proceedings:**

Dr. Glen Doran, Florida State University  
Dr. Edward Friedman, Bureau of Reclamation, Denver  
Ms. Betty Hall, Ballowe Reporting Service  
Mr. Lars Hanslin, Solicitor's Office, Department of the Interior, Washington  
Mr. Wayne Prokopetz, Bureau of Reclamation, Salt Lake City  
Ms. Lana Thompson, Lake Worth, Florida

Dr. McManamon advised the Committee that notice of the meeting had been published in the *Federal Register* and confirmed that a quorum of members was present. Ms. Craig, Acting Chair, requested that each committee member and each member of the public introduce themselves. Ms. Naranjo summed up the sentiments of several other members when she said that she was glad to be at the meeting and was glad to see the "humanity that's part of our Committee."

**Draft 4 of the Proposed Implementing Regulations**

Ms. Craig asked Dr. McManamon to introduce discussion of Draft 4 of the implementing regulations. Dr. McManamon explained that the primary reason for having the meeting so soon after the August meeting was to get proposed regulations out for public comment as quickly as possible. He complimented the Archeological Assistance Division staff and Mr. Hanslin of the Solicitor's Office for their efforts in arranging the meeting and completing Draft 4. He noted that the current draft

was thinner and had been reorganized. He also noted that certain sections were listed as "reserved," because these sections were not essential for basic implementation of the statute and either were not fully thought out, or might be considered contentious and could hold up completion of the core provisions.

Dr. Haas expressed some frustration that many of the points which he thought had been settled during the previous meeting's discussion of the memorandum on summaries and inventories had not been included in Draft 4. Dr. McKeown responded by recounting his efforts since the August meeting. His first step had been to delete the summary and inventory sections of Draft 3 and substitute the appropriate sections from the memorandum. He also deleted or significantly reduced several other sections on the basis of Committee recommendations at the August meeting. The revised document was then sent to Mr. Hanslin for review. Redrafting and editing continued until October 5, 1992, when the draft was sent to the Committee. Mr. Hanslin apologized for any substantive changes he may have made during his legal editing and suggested identifying those changes to see if they could be put back to their original form.

Mr. Monroe questioned the current organization of the draft. Mr. Hanslin outlined the present four subpart structure: Subpart A contains sections on purpose, applicability, definitions, and consultation principles; Subpart B deals with collections; Subpart C deals with excavations and discoveries; and Subpart D contains sections of general applicability. Mr. Monroe suggested reordering the subparts to more accurately mirror the statute, particularly reversing the order of Subparts B (collections) and C (excavations).

Dr. Haas questioned the need for a separate section in Subpart A to deal with Consultation Principles. Mr. Hanslin responded that this section was included to emphasize that consultation is a central aspect of the regulations although it is not legally necessary. Dr. Haas also questioned combining summary and inventory consultation processes into one section when the two processes are quite different. Mr. Hanslin indicated it would not be a problem to insert specific consultation procedures into the sections on summaries and inventories and to delete the general consultation section in the collections subpart.

The Committee then began a section-by-section review of the draft. The section numbers given in italics refer to the October 5, 1992 version.

#### *Subpart A-Introduction*

##### *§ 10.1 Purpose and Applicability*

Dr. McManamon suggested inserting a sentence stating that these regulations apply to human remains and cultural items which are indigenous to Alaska, Hawaii, and the continental United States, but not to United States' territories.

## **§ 10.2 Definitions**

**"Federal agency"** [§10.2 (a)(4)]. Mr. Monroe asked for clarification of the term "instrumentality." Mr. Hanslin explained that it is a statutory term meaning any entity, beyond an individual, which receives Federal funds.

**"Museum"** [§10.2 (a)(6)]. Dr. Haas pointed out that restating the statutory exclusion of the Smithsonian Institution gave the impression that it was excluded by the regulations. He suggested adding a phrase making it explicit that this exclusion was "established by the Act." Mr. Hanslin stated that it was not really necessary to include the exclusion line at all, and suggested its deletion.

Mr. Hanslin went on to explain that the definition of "museum" had been expanded to include an explanation of the term "receives Federal funds." This clarification mirrors language in Title 6 of the Civil Rights Act, with the exception that NAGPRA specifies the receipt of Federal funds instead of Federal assistance, which also includes non-monetary benefits. Mr. Monroe asked for clarification on how direct the connection must be between the Federal government and a particular museum in order for provisions of NAGPRA to apply. Mr. Hanslin responded that if a museum is part of a State or local government or a private university and the State or local government or private university receives Federal funds for any purpose, the museum is considered to receive Federal funds.

Dr. Walker asked why the statute applies to only those institutions receiving Federal funds after November 16, 1990. Mr. Hanslin explained that the statute could not retroactively apply to institutions that have received, but no longer receive Federal funds.

Dr. Haas raised the question of whether provisions of the statute will apply to museums that receive Federal funds after the November 16, 1995 deadline for completion of inventories. Mr. Hanslin explained that this issue is not mentioned in either the statute or the legislative history. Dr. McManamon added that a similar issue relates to museums that receive cultural items after the November 16, 1995 deadline.

Mr. Monroe asked whether the statute applies to Indian Tribal museums. Mr. Hanslin indicated that all museums receiving Federal funds after November 16, 1990 are required to comply with the summary and inventory provisions of the statute.

**"Indian Tribe"** [§10.2 (a)(9)]. Dr. Haas questioned defining "Indian Tribe" to include only those Indian Tribes recognized by the Bureau of Indian Affairs. He understood the definition was meant to be more encompassing. Mr. Monroe added that the statutory definition states "any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Village." Dr. McKeown explained that the crucial provision of this definition is the phrase "recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians," which is verbatim from the Indian Self-Determination Act. In fact, the July 10, 1990, version of H.R. 5237, the bill that eventually became NAGPRA, simply says "Indian Tribe shall have the same meaning given that term in Section 4 of the Indian Self-Determination and Education Act." The Secretary of the Interior has interpreted that definition in the Indian Self-Determination Act to mean those Indian Tribes that are recognized by the Bureau of Indian Affairs. Mr. Hanslin added that Congress knew how the "Indian Tribe" was being interpreted in the Indian Self-Determination

Act when they passed NAGPRA. Further, there is not one word in the legislative history which indicates that they meant anything beyond that. After a general discussion of various options to deal with this dilemma, Dr. Walker suggested that the definition be expanded to include the Bureau's criteria for recognition as required under 25 CFR, Part 83.

In recognition of the discomfort felt by some members of the Committee regarding this definition, Dr. McManamon reminded the Committee that they are required to submit an annual report to Congress that deals, in part, with any barriers encountered in implementing the statute. The Committee may wish to recommend a legislative change to broaden the definition of "Indian Tribe."

"Traditional Religious Leader" [§10.2 (a)(13)]. Dr. Haas questioned whether traditional religious leaders should be recognized by "members of that Indian Tribe" as being responsible for performing cultural duties, or if recognition should be from the Indian Tribe as a whole. Dr. McKeown explained that the "members of" clause had been used in recognition that in some Indian Tribes the political leadership and the religious leadership are divided. Mr. Tallbull stated that the Northern Cheyenne Cultural Commission, of which he is chairman, was founded to begin bridging this gap between political and religious leadership. Ms. Naranjo added that for many Pueblo people it is a bit presumptuous for the statute to require museums and Federal agencies to contact traditional religious leaders. At Santa Clara, no one knows who the traditional religious leaders are except the people in the community. Ms. Craig noted that in Alaska this process will be a little more complicated since each village might have an Indian Reorganization Act Council, an Elders Council, and a Regional Council. Mr. Hanslin recommended deleting "members of" from the sentence.

"Lineal Descendant" [§10.2 (a)(14)]. Dr. Haas suggested revising the definition to specify that ancestry be traced by means of the traditional kinship system of the appropriate Indian Tribe. Dr. Walker expressed some misgivings with this approach, indicating that it may "open a can of worms." Mr. Hanslin indicated that he considered such a change to be lawful, but that this sort of "cultural overlay" may lead to more spurious claims and more litigation than might otherwise occur.

"Human Remains" [§10.2 (b)(1)]. The definition of human remains, and in particular the status of scalps, was extensively discussed at the Committee's previous meeting but was eventually tabled due to Mr. Tallbull's absence.

Dr. Haas asserted that one of the biggest issues faced by the Committee concerned whether human remains that had been incorporated into other objects, such as scalp shirts or finger bone necklaces, should be dealt with as part of the summary or as part of the inventory. Mr. Monroe objected to including scalps as human remains due to the burden it would place on museums to do an item-by-item inventory of all items that contain scalps. Ms. Naranjo and Mr. Tallbull considered the scalps on a shirt to be culturally affiliated with the Indian Tribe that made that shirt. Dr. McKeown proposed amending the definition to include the following statement: "For the purpose of determining cultural affiliation, human remains incorporated into a cultural item shall be considered as part of that cultural item." Dr. Haas pointed out that treating human remains as cultural items would mean Indian Tribes would have to demonstrate that the particular item was an unassociated funerary object, sacred object, or object of cultural patrimony before it could be repatriated. This approach would also have implications for determining ownership. Dr. Sullivan noted that he was unaware of any Indian Tribe seeking repatriation of scalps from shirts culturally affiliated with another Indian Tribe.



He was worried about making explicit the distinction between the cultural affiliation of the shirt and the cultural affiliation of the scalps before everyone has time to sort out these issues for themselves. Ms. Craig reminded the others that no matter how this issue is resolved, human remains should be treated with dignity. Dr. Haas suggested going ahead with the proposed amendment with the expectation that there will be a great deal of comment from museum curators and art dealers. Mr. Tallbull spoke about medicine bundles which contain human remains. He explained that someone had to have made each bundle. The maker had a teacher who gave instructions to collect this plant, this scalp, this skull. The collected objects together became a medicine bundle which belonged to the person who made it.

"Cultural Affiliation" [§10.2 (c)]. Mr. Monroe found the definition confusing. Dr. McKeown explained that the present form was an attempt to deal with the Committee's objection at their first meeting to having present-day individuals related to objects instead of to other individuals. Mr. Monroe proposed deleting everything after the colon. Dr. Walker concurred.

"Tribal lands" [§10.2 (d)(2)]. Dr. Haas asked for clarification of the status of allotments. Mr. Hanslin suggested amending the definition to read "'Tribal lands' means all lands, excluding privately owned lands, which: (i) are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States." Ms. Craig concurred.

"Summary" [§10.2 (e)(2)]. Dr. Haas suggested changing the definition to read "'summary' means the written description of collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony required by § 10.4 of these regulations." This definition reflects the Committee's discussion at their Denver meeting.

"Intentional excavation" [§10.2 (e)(4)]. Dr. Walker questioned inclusion of the phrase "in an archeological context." Mr. Hanslin explained that the phrase, which was also included in the definition of "inadvertent discovery" [§10.2 (e)(5)], was intended to limit potential Fifth Amendment taking problems related to the "discovery" of privately owned cultural items in the trunk of someone's car while on Federal or Tribal land. Dr. McManamon proposed replacing the phrase with "under or on the surface."

### *§ 10.3 Consultation Principles*

Dr. Haas questioned whether this section takes the requirements for consultation somewhat beyond what is mandated by the law. Dr. McManamon explained that the content and placement of this section was designed to emphasize the importance of consultation to the entire protection and repatriation process and suggested that the Committee direct their comments to any specific provisions which overstep legislative intent. The section was eventually deleted.

### *Subpart B-Human Remains and Cultural Items in Museums and Federal Collections*

Dr. McManamon reminded the Committee that this subpart will be redesignated as Subpart C.

#### *§ 10.4 Summaries*

General [§10.4 (a)]. Dr. McKeown proposed amending this paragraph to emphasize that the summary is of "collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony." Mr. Hanslin proposed inserting a sentence stating that the section implements Section 6 of the statute.

Notification [§10.4 (b)(4)]. Mr. Hanslin explained that this section was inserted to meet the due process requirements of the law. Mr. Monroe objected that in its present form, museums would have to complete an inventory of all collections claimed by an Indian Tribe instead of just those that were to be repatriated. Dr. Haas suggested changing this to a Notice of Intent to Repatriate that covers only those items that the museum or Federal agency is prepared to repatriate. Mr. Hanslin concurred. Mr. Monroe suggested that some museums or Federal agencies might use this step to try circumventing the law by having another Indian Tribe waiting in the wings to challenge the repatriation. Mr. Hanslin admitted that may happen, but that the Notice of Intent to Repatriate would not be the most efficient time to do it. The Notice is intended to protect museums and Federal agencies from being held liable for an object which has already been repatriated.

#### *§ 10.5 Inventories*

Notification [§10.5 (d)(1)]. Dr. Haas asked whether it was necessary to require that the Notice of Inventory Completion be sent by certified mail. Mr. Hanslin indicated that there is no legal requirement that it be certified, although doing so would certainly be in a museum or Federal agency's best interest. Dr. Sullivan suggested deleting the line. Mr. Hanslin suggested inserting a sentence stating that the section implements Section 5 of the statute.

Dr. Walker asked at what point a museum or Federal agency was locked into the NAGPRA process. Dr. McManamon answered that the NAGPRA procedures went into effect on November 16, 1990, and any museum which failed to follow the statutory provisions would be potentially liable. Mr. Hanslin added that some museums and Federal agencies are repatriating things without the required notification in the *Federal Register*. He pointed out that the notice serves as the key to cutting off claims. Without it the museum or Federal agency is at risk of being sued, perhaps years later, for failing to comply with the law. Dr. Walker indicated that this aspect of the law is not generally known.

Electronic Format [§10.5 (d)(4)]. Mr. Monroe suggested that many small museums would not be able to provide information in an electronic format. Dr. McKeown reminded the members that the NPS staff is required to monitor inventories and keep the Committee appraised. It will be easier for each individual museum to put their inventory in an electronic format than it will be for the staff to deal with several thousand inventories in printed form. Dr. Haas suggested adding: "Information on the proper format for electronic submission and suggested alternatives for museums unable to meet these requirements are available from the Departmental Consulting Archeologist."

Completion [§10.5 (e)]. Mr. Monroe questioned the meaning of the term "good faith", which was not defined in the statute or in the draft regulations. He wondered whether initiating one consultation and preparing a written plan by the five year deadline should be accepted as a good faith effort to

comply with the statute. Dr. Haas indicated that given the fact that regulations are not yet in place and the grant program not yet funded, this minimum standard may well constitute a good faith effort for some small museums. Mr. Hanslin pointed out that the statute reads "good faith effort as determined by the Secretary." It would be possible to list additional factors the Secretary will consider in assessing that effort. Dr. Haas suggested adding "institutional resources" as one of the factors to be considered by the Secretary. Mr. Monroe objected and instead proposed adding language stating that a good faith effort shall "include, but not be limited to," an initiation of active consultation and the development of a written plan.

#### *§ 10.6 Consultation*

Dr. McManamon reminded the Committee of previous discussions dealing with § 10.3 and the possibility of having separate consultation sections for summaries and inventories. Dr. Haas proposed the use of two sections in order to make it clear that consultation is required in both cases. Mr. Monroe agreed that this strategy would be more effective, though less efficient. Dr. Sullivan concurred. Dr. Haas also suggested including the kinds of cultural items considered unassociated funerary objects within the information requested from Indian Tribes. The section was deleted.

#### *§ 10.7 Repatriation*

Dr. Haas objected to the first sentence of § 10.7 (a), stating that it downplayed the importance of the numerous exceptions, and suggested moving § 10.7 (c) to the front of the section. Mr. Hanslin explained that the exemptions had been placed at the end since some of them applied to both human remains and associated funerary objects and to unassociated objects, sacred objects, and objects of cultural patrimony. Dr. Walker objected to inclusion of any discussion of "right of possession" when dealing with human remains.

Mr. Monroe suggested restructuring the subsection to make explicit the repatriation process. Dr. Haas volunteered to draft the revision and later returned with two separate subsections. § 10.7 (a) was rewritten to include criteria for repatriation, right of possession, and notification provisions for unassociated funerary objects, sacred objects, and objects of cultural patrimony. Criteria for repatriation included: (i) the object meets the definitions; (ii) cultural affiliation is determined; (iii) a lineal descendant or Indian Tribe presents evidence that the museum or Federal agency does not have right of possession; (iv) the museum or Federal agency fails to present evidence proving it has right of possession; and (v) none of the specific exemptions apply. Right of possession was defined using the statutory text. Finally, notification provisions were listed. § 10.7 (b), dealing with the repatriation of human remains and associated funerary objects, was structured in a similar fashion, except that the definition and provisions for documenting right of possession were omitted. Dr. Haas also suggested that § 10.7 (g) on Standard of Proof be deleted, as it had already been inserted under § 10.7 (a). Mr. Hanslin added that § 10.16 (a) on Right of Possession should also be deleted.

Dr. McManamon suggested reserving a section to deal with the statute's future applicability. In particular, he suggested that the section should consider the issue of museums which receive Federal funds after the deadlines for summary and inventory completion and the issue of cultural items added to collections after the deadlines. Mr. Hanslin pointed out that the statute does not address either point and to be legal any additional provisions must be within the reasonable scope of implementation

of the law. Dr. Sullivan added that he interprets the statute as creating a standard in perpetuity rather than a one-time exchange of information.

*Subpart C-Human Remains and Cultural Items Recovered from Federal or Tribal Lands*

Dr. McManamon reminded the Committee that this subpart will be redesignated as Subpart B.

*§ 10.10 Intentional Excavations*

Procedures [§ 10.10 (c)]. Dr. Walker questioned the requirement that "any person who believes" a planned activity on Federal land may result in excavation of human remains or cultural items shall notify the responsible Federal official, noting that there could be thousands of people who might believe such a thing is going to occur. Mr. Hanslin acknowledged that "any person" had come from the inadvertent discovery section and agreed to change this section to read "Any person who proposes to undertake an activity..." Mr. Hanslin suggested inserting a sentence stating that the section implements Section 3 (c) of the statute.

Dr. Walker was concerned that Federal agency officials might "hide in their offices" in order to avoid learning about the possibility of encountering human remains or cultural items. Dr. McManamon stated that such activity would probably land the particular Federal agency official in court. Dr. Walker suggested including a sentence indicating that Federal agency officials shall take reasonable steps to determine whether a planned activity, of which he or she has received notice or otherwise is aware, may result in the excavation of human remains or cultural items from Federal lands. Dr. McManamon concurred.

Dr. McManamon suggested further specifying the contents of the notice to Indian Tribes to include "the Federal agency's proposed treatment of any human remains or cultural items that may be excavated, and the proposed disposition of any excavated human remains or cultural items."

Dr. McManamon suggested inserting a subsection to further ensure coordination of NAGPRA provisions with other planning activities. He proposed § 10.10 (c)(3) to read: "If the planned activity is also subject to review under Section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), the Federal agency official should coordinate consultation and any subsequent agreement for compliance conducted under that Act with the requirements of § 10.3 (c)(2) and § 10.5 of these regulations. Compliance with these regulations does not relieve Federal officials of requirements to comply with Section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*)."

*§ 10.11 Inadvertent Discovery*

Federal Lands [§ 10.11 (d)(2)]. Mr. Monroe asked about the requirement that Federal agency officials must notify, within one working day, known Indian Tribes that are likely to be culturally affiliated with discovered human remains or cultural items. He reminded the Committee that numerous comments were received on Draft 3 related to this point. Mr. Hanslin explained that the short time-frame had been used because the thirty-day stoppage of activities in the area of inadvertently discovered human remains or cultural items begins when the Federal land manager

receives notice and, without some type of deadline, the official could wait the entire thirty days before notifying the Tribe of the discovery. Dr. McKeown explained that an earlier draft had specified notification must occur within twenty-four hours, but weekends and holidays needed to be taken into account. Mr. Hanslin suggested inserting a sentence stating the section implements Section 3 (d) of the statute.

#### *§ 10.12 Consultation*

Written Agreement [§ 10.12 (f)]. Dr. McManamon explained that this subsection, as it was originally drafted, imposed a requirement on Federal agency officials and Indian Tribe officials to develop a binding agreement. He explained that such an agreement, although a laudable goal, is not required by the statute. He proposed renaming the document a Written Plan of Action which includes a provision specifying the treatment, care, and handling of any human remains or cultural items recovered; steps to be followed in contacting Indian Tribe officials; and the kind of traditional treatment to be afforded the human remains or cultural items.

#### *§ 10.13 Ownership and Disposition*

Dr. McManamon explained that the subsection's criteria for determining priority of ownership had been revised to explicitly reflect the statutory language, as requested by several individuals in comments on Draft 3.

Dr. Haas objected to the thought expressed in the last line of § 10.13 (b) that human remains would be "disposed." Mr. Hanslin suggested replacing the term with "transfer ownership or control" and deleting the term "disposition" from the section title.

#### *§ 10.14 [Reserved-Disposition of Unclaimed Human Remains].*

Dr. McManamon explained that this section was reserved for procedures for the disposition of unclaimed human remains.

### **Subpart D-General**

#### *§ 10.15 Lineal Descent and Cultural Affiliation*

Dr. Haas proposed amending the criteria for determining lineal descent to bring them in line with the previously changed definition. Dr. McKeown supported Dr. Haas' suggestion, explaining that inclusion of a reference to a traditional kinship system would help to ensure a group-specific method for determining who should receive cultural items. Mr. Tallbull supported this change.

#### *§ 10.16 Right of Possession, Disposition Limitations and Remedies.*

Dr. Sullivan suggested retitling this section "Repatriation Limitations and Remedies" to bring it into line with previous changes. Mr. Hanslin also suggested deleting § 10.16 (a) Right of Possession, as this subsection had already been moved to § 10.7. Mr. Hanslin proposed retitling § 10.16 (b), "Repatriation Limitations", and deleting the reference to right of possession in order to make it clear

that Congress did not intend any Fifth Amendment takings from museums to occur. He explained that, unfortunately, the statute leaves the takings issue a bit ambiguous.

Dr. Haas raised the issue of the lack of a statute of limitations in the subsection on Failure to Claim. He pointed out that this omission effectively puts a museum's entire North American collection in perpetual uncertainty since its title will remain clouded. Dr. McKeown pointed out that a statute of limitations had been discussed by Congress but not included in the final statute. Dr. Sullivan suggested reserving a section to deal with this issue.

#### **Election of the Committee Chair**

Following discussion of Draft 4 of the implementing regulations, Ms. Craig asked the Committee to consider election of a Chair for the next year. Dr. McManamon explained that a full-time Chair was necessary both to facilitate meetings, and between meetings, to serve as the Committee's primary liaison with the Departmental Consulting Archeologist. Mr. Monroe reminded the Committee that at the Denver meeting the members had asked Ms. Naranjo to consider taking on the responsibilities of the position. Ms. Naranjo responded that, although she didn't like to be called conservative - she would rather be called Pueblo, after a month of consideration on the "new shoe" she was about to buy, she had decided that if it was the consensus of the rest of the Committee to reinvite her, she would accept the position.

#### **Dispute Resolution Procedures**

Dr. McManamon introduced the Draft Dispute Resolution Procedures for review by the Committee. He explained the various steps of the process: receipt of a request; decision by the Departmental Consulting Archeologist and the Committee Chair that review of the dispute is appropriate; placement of the dispute on the Committee's agenda; review of the facts of the dispute by the Committee; issuance of a recommendation; and the possible resubmission of the dispute for further consideration and issuance of a finding. Dr. Sullivan suggested that the Committee be very careful to avoid taking on a "Dear Abby" role of giving advice to people who do not know what to do. Mr. Monroe pointed out that each member of the Committee would probably be approached individually and asked to deal with disputes. He stressed the importance of a clear explanation that an opinion given by an individual Committee member is a personal opinion and does not represent the opinion of the Committee. Mr. Tallbull cautioned the members to be extremely careful with the press. "Someone from the press will call and ask your opinion, and when it appears, the group that doesn't like what you said will be down at the trading post buying 30-30 shells."

#### **Future Activities**

Dr. McManamon updated the Committee on the status of several items.

### *Memorandum on Summaries and Inventories*

With Committee review of the Draft Proposed Regulations completed, Dr. McManamon indicated that he was prepared to submit the memorandum to the Department of the Interior for review. He anticipated that, without any unforeseen problems, the memorandum might be out by the end of the year.

### *Proposed Regulations*

Dr. McManamon indicated that based on the Committee's review and comment, he was prepared to submit the current draft as proposed regulations for publication in the *Federal Register*. This process would entail drafting a preamble explaining some of the decisions the Committee had made regarding definitions and procedures, review of the entire package within the Department of the Interior, obtaining an exemption to the President's regulatory moratorium, and review by the Office of Management and Budget. The regulations would then be published in the *Federal Register* for public comment.

### *Reserved Sections*

Dr. McManamon explained that several section had be "reserved" in the draft regulations. These sections would appear in the proposed regulations as a title with no text. He explained that this is a way to identify issues and procedures that are recognized as being necessary, but for which there was either not enough time to complete or were not considered essential at this time. Dr. Sullivan inquired about the reserved section on civil penalties, particularly a statement in an earlier draft indicating that museums which failed to comply with the statute risked the loss of Federal funding. Dr. McKeown explained that Mr. Hanslin's opinion was that such a penalty was not mentioned in the statute or the Committee reports. Mr. Monroe asked that it be communicated to Mr. Hanslin, who had left the meeting, that he understood the civil penalties were intended to be substantive and that he was against any effort to water them down. He went on to state that he was opposed to any approach that tried to assess civil penalties on the basis of monetary or market value. There were no objections from the Committee.

### *Hui Mālama and Hearst Museum Dispute*

Dr. McManamon outlined the chronology of events related to the dispute. In September, 1992, *Hui Mālama I Na Kūpuna 'O Hawai'i Nei*, a Native Hawaiian organization recognized by the statute, submitted a formal request to the Committee to consider their dispute with the P.A. Hearst Museum at the University of California-Berkeley. Dr. McManamon consulted with Ms. Craig, in her role as acting Chair, to decide whether the Committee should consider the dispute. They both agreed that the dispute should be considered by the Committee. On September 24, 1992, Dr. McManamon notified both Hui Mālama and the Hearst Museum, and asked them to submit written statements by the beginning of November. The plan is for the NPS staff to review the written statements, discuss them with the Chair, and move forward from that point. The dispute may end up on the agenda for the next meeting.

## *Grants*

Dr. McManamon indicated that the American Association of Museums, the Native American Rights Fund, the Society for American Archaeologists, and other organizations were working as a coalition of Native American, museum, and scientific organizations to meet with various members of the administration and of Congress to lobby for an appropriation for the grants program authorized in the statute. Mr. Monroe urged members of the Committee to go on record in support of the grants program and to convey that opinion directly to the Secretary of the Interior. Dr. Haas agreed with this suggestion, adding that the Committee should also voice their concern to the Congressional appropriations committees and various members of Congress. Mr. Monroe and Dr. Haas agreed to draft a letter from the Committee to the appropriate members of the Administration and Congress.

## *Information Clearinghouse*

Dr. McManamon explained that the Archeological Assistance Division was beginning to serve as a point of contact for Indian Tribes, museums, Federal agencies, and other interested parties who wish to find out about implementing the statute. AAD has put together a mailing list for all Federally recognized Indian Tribes. The longer range goal, he explained, was to provide this type of information as an on-line computer system, as well as through traditional paper form. He requested the Committee members provide him with contacts or networks that they felt should be included. Dr. Haas asked that information also be gathered regarding what different groups consider to be sacred objects and objects of cultural patrimony.

## *Upcoming Meetings*

Dr. McManamon suggested that the Committee consider establishing a regular meeting schedule and tentatively assign locations for next year's meetings. The first meeting of 1993 was tentatively scheduled for late January in Hawaii to consider the dispute between *Hui Malama I Na Kupuna 'O Hawai'i Nei* and the P.A. Hearst Museum, as well as other aspects of implementing the statute in Hawaii. The second meeting was tentatively scheduled to follow the close of the comment period for the proposed regulations -- possibly in May or June -- in order to expedite moving from proposed to final regulations. The Committee expressed interest in holding this meeting in the Plains states. The Committee also expressed interest in holding the third meeting in conjunction with the annual meeting of Keepers of the Treasures, scheduled for October, 1993.

## *Public Comment*

Mr. Wayne Prokopetz, from the Bureau of Reclamation (BOR) in Salt Lake City, Utah, spoke about BOR's attempts to implement NAGPRA as part of the Animas-LaPlata Project located in Southwest Colorado. BOR was recently enjoined from doing any archeological work beyond mapping until consultations were completed with 21 Pueblos, the All Pueblo Council, the Navajo Nation, the Ute Mountain Ute, and the Southern Ute. The process has been disrupted due to conflicts between the various Tribes. Mr. Hanslin stated that this situation points out the necessity of getting the regulations finalized as quickly as possible, because currently, U.S. District judges can read the law any way they choose. There are no prior cases and no regulations to guide them.



Dr. Glen Doran, an anthropologist from Florida State University and the President of the Florida Archeological Council, addressed the Committee. He voiced concern about the definition of Indian Tribe official which, he believes, is based on the assumption that one individual in each Indian Tribe has been charged with dealing with these kinds of issues. He pointed out that a recent questionnaire to eighty Indian Tribes garnered only about a 35-40% response rate, and that some of those replies consisted of "I don't need to tell you this information, we will take care of it." Dr. Haas responded that he understood it to be the Indian Tribe's responsibility to respond to the museum and Federal agency consultation attempts. Dr. Doran also indicated that he felt the one working-day requirement for notification of an inadvertent discovery was not enough time. Dr. Edward Friedman, a BOR Historic Preservation Officer, commented that the National Historic Preservation Act regulations call for a 72-hour deadline for the initiation of consultation. Dr. McManamon pointed out the situations are somewhat different, however, in that there is no 30-day clock ticking during the NHPA process. Dr. Doran asked whether there were some situations in which the Committee might ask Congress to amend the statute. Mr. Monroe answered that it was conceivable, but that there seemed no intent on the part of the Committee to engage in that process at this point.

Ms. Naranjo asked Dr. Haas to provide a closing invocation or "good saying." Dr. Haas gave thanks for everyone's safe travel to the meeting, for the good work they had accomplished, and for the help the Committee had received from their friends from the National Park Service. He also wished that the Committee could continue their work in good spirit, that their families would understand what they were doing, and, on the 500th anniversary of Europeans in the New World, that the next 500 years would be better than the last. He ended by saying that he thinks a lot about his family when he is away from them, but that it is very nice to have another family in the Committee.

The meeting was adjourned by Ms. Naranjo at 1:30pm on Saturday, October 10, 1992.

Approved:

Tessie Naranjo  
Tessie Naranjo, Chair  
Native American Graves Protection  
and Repatriation Review Committee

March 28, 1993  
Date





